SUMMER NUMBER.

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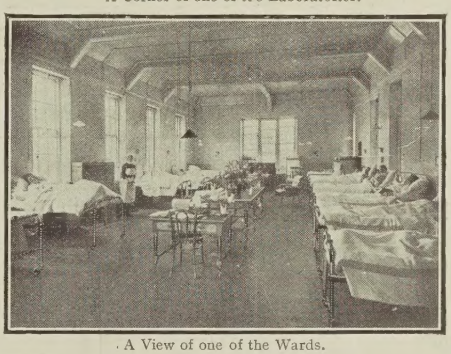

A View of one of the Wards.

A View of the Hospital Chapel.

The Cancer Hospital

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The Solicitors' Journal

VOL. LXXVII. **Saturday, June 24, 1933.** No. 25

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Current Topics.

The Law Society: Council's Annual Report.

THE annual report of the Council of The Law Society, which is fully dealt with elsewhere in this issue, contains a number of interesting points which may be shortly stated here. It is indicated that the Bill, which has been prepared for dealing with defaulting solicitors and of which the principal features are set out in the report, passed its third reading in the House of Commons on 12th May, 1933, and has now passed to the House of Lords. With regard to solicitors' remuneration, it is pointed out that the 33⅓ per cent. statutory addition to scale charges has been used to meet extra overhead expenses, particularly clerks' salaries. The reduction of the addition to 20 per cent. with regard to non-litigious and 25 per cent. with regard to litigious business took effect from 1st December and 12th October respectively. As a result of the recent disallowance by a county court judge of the costs of a successful plaintiff because his solicitor had not signed the Court Roll, the Council have requested the Lord Chancellor to include in the new County Court Bill a clause to repeal sub-s. (1) (ii) of s. 44 of the Solicitors Act, 1932. Reference is made to the memorandum setting out the reasons which make it desirable that justices' clerks should be barristers or solicitors. This matter was dealt with at length in the last annual report. The announcement by the Bar Council that the two-thirds rule need not apply to counsel's fees over 150 guineas was followed by a claim by a barrister's clerk that the change did not apply to criminal work. The Council of The Law Society recognise no distinction between civil and criminal business in this connection. The report refers to the activities of "legal aid" societies in accident cases, and the efforts which have been made at Folkestone to curb their activities. Hospital patients hitherto visited by unauthorised agents offering assistance on a champertous basis are now able to select their solicitors from a rota according to a scheme formulated by the Council with the co-operation of Folkestone solicitors. The present membership of the Society is the highest on record, comprising as it does about two-thirds of practising solicitors. The foregoing summary is sufficient to indicate the excellent work which The Law Society is doing and should prove an incentive to those solicitors who are not members to join it.

Costly Altruism.

IN his recent address on "Law and Ethics," Lord MACMILLAN spoke with satisfaction of the approximation of law to ethical considerations and of cases in which the judiciary has recognised the moral virtue of altruistic endeavour. He quoted with approval the stately language of Chief Justice COCKBURN, who observed in one of his judgments that "the impulsive desire to save human life when in peril is one of the most beneficial instincts of humanity." It has, however, regretfully to be recognised that the courts do not always exhibit this high regard for altruism when exhibited by a desire to help others. Quite recently, in *Cutter* v. *United Dairies Co.*, in the Court of Appeal, the question of the right of a person, who had gone to the assistance of the driver of a van who was in difficulties with his horse which had bolted and was still very restive, to recover in respect of the injuries he had sustained in this laudable enterprise, was considered. The claim for damages was met by the maxim "*volenti non fit injuria*," and although the jury at the trial negatived the suggestion that the plaintiff had done what he did with full knowledge of the risk he was running, the Court of Appeal held that there was no evidence to justify this finding, and that the plaintiff acted as he did at his peril. While the decision may be sound in law, it is one that holds out little encouragement to those who seek to help others in danger of life or limb. Lord Justice SLESSER, incidentally, in the course of his judgment, conceded that there might be circumstances in which a person might be able to resist the application of the maxim "*volenti non fit injuria*," as, for example, where a person saw his child in imminent peril in the street from a runaway horse, and ran forward to save the child, receiving injuries in so doing. In this he was echoing the observation of Mr. Justice MACNAGHTEN in another recent case, that "when you see a small child in peril, you do not think of anything else." But it must be confessed that the law has been somewhat niggard in its recognition of altruistic motives in the efforts of men to be helpful to their fellows in danger.

Regimental Colours in a Church.

A SOMEWHAT curious faculty application was the subject of a reserved judgment recently delivered by Mr. H. B. VAISEY, K.C., as Chancellor of the Diocese of Carlisle. The Border Regiment, whose headquarters are at Carlisle, having formed a collection of objects of interest relating to the regiment in the Keep of Carlisle Castle, desired to add to it five sets of old regimental colours of the 55th (Westmoreland) Regiment, now the 2nd battalion of the Border Regiment, dating from 1785 to 1888, together with a remarkable Chinese Dragon trophy of great value, captured in 1841. Ever since 1850 the Parish Church of Kendal had been the repository of the

regiment's disused colours, and they had become much decayed through the ravages of time. Three years ago, however, they were repaired and placed in oak cases with glass fronts. The colonel of the regiment, Major-General SINCLAIR-MACLAGAN, now applied for a faculty to authorise the removal of the colours and trophy to Carlisle Castle, and contended that the Chancellor could make the order if in his discretion he thought fit to do so. The Chancellor refused the faculty, on the ground that the colours and trophy were intended when deposited to be kept permanently in the church, and that the regiment was not entitled to have them returned to it on its demand, even to make its museum collection complete. The only modern authority in point appears to be *Vincent* v. *Eyton* [1897] P. 1, where the Rector of St. Margarets, Westminster, removed colours of the old Westminster Volunteers from the chancel, where they had been hung, after a solemn presentation and acceptance, for about ten years, to another part of the church, and Colonel Sir HOWARD VINCENT, of the Queen's Westminsters, obtained a faculty requiring the rector to replace them in their original position. Dr. TRISTRAM said that they had been placed there under the implied understanding that they should remain and came in the same category as monuments, coat-armour, and other ensigns of honour set up in memory of the deceased, which, though introduced without a faculty, cannot legally be removed at the pleasure of the incumbent. A very old authority for this is *Cowen's Case* (1612), 12 Co. Rep. 105, where it was held that a parson could not take away a gravestone, coat of armour, etc., though annexed to his freehold, nor anything "hung up in the church for the honour of the deceased." *Vincent* v. *Eyton* also decides that the property in any colours not affixed to the freehold is vested in the churchwardens for purposes of safe custody.

Annuity—Recovered Income Tax.

A SHORT but important point concerning sums recovered under the Income Tax Acts by one in receipt under a will of annuities, the amount of which was to be calculated after deduction of tax at the current rate to amount to stated sums, has just been decided in *Re Jones; Jones* v. *Jones*, reported in *The Times*, 21st June. It is well settled that where an annuity is bequeathed "free of income tax," the residuary estate of the testator benefits by such proportion of the sums recovered as the annuity bears to the total income of the annuitant (*Re Pettit; Le Fevre* v. *Pettit* [1922] 2 Ch. 765). In *Re Jones* the testatrix provided that the beneficiary should receive such an annuity as, after deducting income tax therefrom at the current rate for the time being, would amount to the stated sum. "The income tax only comes in," EVE, J., said in the course of his judgment, "for the purpose of fixing in each year the amount to be provided. In that connection the current rate means the standard rate, not the rate at which the annuitant may ultimately have to pay, and in each of the two cases [there were two annuities of £350 and £60 respectively] the bequest is of an annual sum liable to fluctuation in accordance with the movement up or down of the standard rate." The trustees would from the sum set aside for the annuitant each year pay the tax in respect thereof, and if the annuitant recovered any part of the tax paid it would belong to her. She was therefore entitled to the sum of £131 12s. 7d. recovered from the Inland Revenue Commissioners for the three years to 5th April, 1932, the costs of the application being taxed and paid out of the residuary estate of the testatrix.

Carriage Entrance over Pavement.

THE Court of Appeal (*The Times*, 20th June) has allowed an appeal from the decision of a Divisional Court in *Marshall* v. *Blackpool Corporation* [1933] 1 K.B. 688, which was referred to in a "Current Topic" in our issue of 10th June. The point in issue turned upon the scope of s. 62 of the Blackpool Improvement Act, 1879. The plaintiffs originally appealed to quarter sessions upon the corporation's refusal to sanction the making of a communication over a footway between his premises and the road. The appeal was allowed, subject to the opinion of the King's Bench Division on a case stated, on the ground that the corporation had taken into account matters outside the purview of the section mentioned, viz.: (*a*) questions with regard to the safety of the public and the convenience of pedestrians and vehicular traffic using the road, and (*b*) certain powers it was hoped to obtain under a town-planning scheme whereby the portion of the borough in which the premises were situate would be zoned for residential purposes only. Certain admitted facts not mentioned in the case stated were before the Court of Appeal. Messrs. MARSHALL, who were large charabanc proprietors, proposed to use the premises as a standing ground for their vehicles, which would have to enter and leave by an opening in the wall. The Court of Appeal, consisting of SCRUTTON and SLESSER, L.JJ., and EVE, J., held (EVE, J., dissenting) that, while the corporation were not entitled in their refusal to allow access to take into consideration the town-planning powers they hoped to obtain, they were justified under the section in considering the safety of the public. Section 62 of the Act restricted the common law right of a frontager to enter and return from the highway at any point. In answering the question whether the corporation were restricted in applications under s. 62 to matters specifically mentioned therein, such as the place and details of the work, SCRUTTON, L.J., said that it seemed to him that they must be entitled to know the nature of the user in order to decide whether the proposed paving was sufficient to support the weight of the vehicles crossing it and to protect pipes underneath from damage. "The corporation," the learned Lord Justice continued, "must be entitled to consider the safety of the public and the convenience of pedestrians and vehicular traffic." Section 62 deprived the frontager of his right to leave his land where he liked except as approved by the corporation, who, though they could not prohibit egress of vehicles at any point at all, were entitled in selecting the point to take into consideration the safety of the public. The application must go back to the corporation to consider it on the lines indicated. In the opinion of EVE, J., the section in question did not expressly or by implication abrogate or limit the absolute right of the owner to gain access to the highway at any point he might select. Such an owner has to satisfy the corporation by the details enumerated in the section that the proposed crossing was one which would not interfere with the reasonable exercise of public rights. The object of the section was to regulate the exercise of the right where that was an intervening pathway, but not to limit or restrict it. The general position in cases of this nature is dealt with elsewhere in this issue.

Science and the Standard of Living.

ADVANCES in science and sanitation, and their effect upon the question whether inhabited caravans and inhabited converted tramcars, devoid of sanitary conveniences, were temporary buildings within the Public Health Acts Amendment Act, 1907, s. 27, were discussed by Mr. Justice HUMPHREYS in the course of his judgment in *Mitcham U.D.C.* v. *Seale* (*The Times*, 14th June). In making the declaration sought by the council, the learned judge observed that a dwelling regarded as satisfactory by our ancestors might no longer be considered satisfactory at all, and went on to blame bad housing for a good deal of trouble and even crime: a man made to live like a pig could be expected to behave like a pig. Such judgments serve to remind us that many of the most useful and most frequently cited judicial definitions are sufficiently wide in language to permit of their application to changed circumstances, whether the change be brought about by progress of science or by other causes. The test of nuisance propounded by KNIGHT-BRUCE,

V.-C., in *Walter* v. *Selfe* (1851), 15 Jur. 416, "an inconvenience to be considered in fact as more than fanciful, more than one of mere delicacy or fastidiousness, as an inconvenience materially interfering with the ordinary comfort, physically, of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions among English people," is probably quoted in every action for nuisance heard to-day, though our habits of living have undergone much modification since Early Victorian times.

Housing Requirements.

INDEED, the cases referred to above remind us of an action on the case brought in 1611 : *William Aldred's Case*, 9 Co. Rep. 58A, in which porcine habits, now cited by HUMPHREYS, J., as an illustration of all that is undesirable, actually found a champion in counsel for the defence. The cause of action was the erection, by the defendant, THOMAS BENTON, of a hogstye near the plantiff's dwelling, "*ita quod per foetidos et insalubres odores sordidorum prædict, suum et porcorum praed, Thomae in aulam et conclave praed, ac alias partes praed, messuagii ipsius Willielmi penetran et influent idem Willielmus et famuli sui . . . in aula et conclavi . . . remanere non potuerunt.*" In these circumstances, it was seriously argued that "one ought not to have so delicate a nose that he cannot bear the smell of a hog," because "*lex non favet delicatorum votis*" (a maxim expressive of KNIGHT-BRUCE'S reservations as to "mere delicacy or fastidiousness"). The argument was, however, rejected, and the court laid down, as desirable in a house, four features which might usefully be considered by modern housing authorities, namely : *habitatio hominis, delectatio inhabitantis, necessitas luminis* and *salubritas aeris.*

Coroner's Inquests *in camera.*

A CORONER in a northern city has had some controversy with the local Press in respect of his decision to hold certain inquests without admitting newspaper representatives. Such representatives are, of course, entitled to admission as members of the public to any court which is open to the public as of right. *Primâ facie*, all courts of record are of this character, that of the coroner being included. All such courts, however, may sit *in camera* if the needs of justice so require, the principle being discussed generally in *Scott* v. *Scott* [1913] A.C. 417, and in respect of the coroner's court in particular in *Garnett* v. *Ferrand* (1827), 6 B. & C. 611. In that case Lord TENTERDEN, C.J., laid down certain circumstances in which an inquest may properly be conducted in secrecy, and observed (p. 627) : "Cases also may occur in which privacy . . . may be due to the family of the deceased. Many things must be disclosed to those who are to decide, the publication whereof, to the world at large, may be productive of mischief without any possibility of good." He added that the person to decide whether privacy was necessary or proper was the coroner, and no one else. Previously there were certain *dicta* to the effect that the public had the unrestricted right to be present at an inquest, see, for example, that of Lord KENYON, C.J., in *R.* v. *Eriswell* (1790), 3 T.R. 707, at p. 722. The point was raised recently in *R.* v. *Divine ; Ex parte Walton* [1930] 2 K.B. 29, but the court held that the allegation that certain persons had been excluded from the court by the coroner was not proved. The power to exclude the public, and therefore the press, merely to spare the feelings of relatives in cases of suicide, etc., is one which no doubt is capable of abuse, and would be abused if a particular coroner exercised it in such a way as to spare the feelings of certain privileged persons, and to allow others to be harrowed by full publicity. It does not appear that the plaintiff in *Garnett* v. *Ferrand* was turned out for this reason, and it may be that to hold an inquest *in camera* for no other reason than that the relatives of the deceased would be distressed at publicity would be contrary to the law as laid down in *Scott* v. *Scott, supra.*

Amendment of Judgments.

IT has long been recognised that when a judgment has been drawn up and entered it cannot be altered except under the slip rule, which takes account of clerical mistakes, or by a fresh action to have the judgment set aside on the ground, say, of fraud. In a case which came before the Court of Appeal last week this question again cropped up under somewhat peculiar circumstances. A lady was being sued for a sum of money. She had been known to the plaintiff as a married woman and she was sued as such. The solicitor who was acting for her at the time was also under the belief that she was a married woman, and he entered appearance for her as such. Eventually judgment was signed against her under Ord. XIV in what is called the *Scott* v. *Morley* form, upon which it appeared that bankruptcy proceedings could not be taken as she was not carrying on a business of her own, or indeed at all. It was then discovered that she was not a married woman, but was a widow, a fact which she had not disclosed. Thereupon an application was made to the Master to amend the judgment so as to make it a personal one instead of one in the *Scott* v. *Morley* form. The Master held he had no jurisdiction to amend the judgment in those circumstances. On appeal the judge in chambers made the amendment asked for and from that decision the defendant appealed to the Court of Appeal. There there was a division of opinion, Lord Justice SCRUTTON holding that the court had an inherent jurisdiction to amend where the error in the judgment was attributable to the act of the defendant. Lords Justices GREER and ROMER, on the other hand, took the view on the authorities that the mistake could not be set right in the way claimed. The judgment, as they pointed out, was that which the court intended to give on the facts before it ; it was true that those facts were inaccurate, but that did not prevent the judgment being the judgment of the court. To avoid the necessity of a fresh action, however, the Court of Appeal provided a means of escape by extending the time for appealing from the order of the Master, who had entered judgment in the *Scott* v. *Morley* form.

The Law's Delay.

WITH the law's delay as one of the items in the catalogue of human ills we have all been long familiar from its specific inclusion in Hamlet's immortal soliloquy where it is collocated with the oppressor's wrong, the proud man's contumely, and the pangs of despised love. Not a little, it is true, has been done since SHAKESPEARE'S day to quicken the slow-moving wheels of the legal machine, and it is matter for congratulation that in recent times lawyers, who are often, but quite wrongly, debited with the desire to protract the various stages of litigation from mercenary motives, have been active in devising means to overcome the delays which so frequently have been a reproach to the administration of justice. The New Procedure has already shown excellent results from its first year's working, and something more may be expected when the proposals of Lord HANWORTH'S Committee are in full operation. But our experiences of the law's delay appear not to have been so bad as those of some of the American States, where recently an appeal has been issued by a number of leading lawyers suggesting that litigants should submit their disputes to arbitration instead of having them pending in the courts for an unduly long time. No fewer than 100 lawyers of high standing at the New York Bar, we are told, have consented to give their services as arbitrators without reward. In one of the courts of which mention is made it is stated that a case cannot be expected to be ready for hearing in less than two years after it has been set down. We can show a better record than this.

Mr. William Fisher, solicitor, of Gray's Inn-square, and of Harston, Cambridge, left £10,974, with net personalty £8,131.

Criminal Law and Practice.

CHOOSING THE MODE OF TRIAL.

A QUESTION which often confronts the solicitor defending an accused person upon a criminal charge is whether to advise his client to be tried summarily or exercise the right to be tried by a jury. The cases in which this question can arise are now very numerous, and it can come up in two ways.

The charge may be one of an offence punishable on summary conviction with more than three months' imprisonment, in which event it is the duty of the court to tell the accused that he is entitled, if he wish, to be tried by a jury: Summary Jurisdiction Act, 1879, s. 17. He must be put to his election before the case begins: *ibid.*, and *R.* v. *Cockshott* [1898] 1 Q.B. 582; 42 SOL. J. 346, and other cases.

For a number of such offences the statute provides both a punishment on summary conviction and a punishment on indictment, and here the defendant can be sent for trial by jury whether he wishes to be so tried or not. The court is not bound to give him the option of his method of trial. It has been argued that if in such a case he go for trial on his own election he is liable to no greater penalty than can be inflicted on summary conviction, but there is no statutory authority for this view, and there seems to be no reasonable doubt that he is then liable to the maximum penalty enacted in respect of conviction on indictment.

An example of an offence where the mode of trial is determinable by the defendant alone is that of keeping a gaming-house, contrary to s. 4 of the Gaming Act, 1845, where the punishment on summary conviction is six months' imprisonment. An example of an enactment which furnishes as it were a double choice is provided by s. 10 of the Bankruptcy (Amendment) Act, 1926, which provides a punishment for various felonies and misdemeanours under the Bankruptcy Act, 1914, of two years' imprisonment on indictment, or twelve months on summary conviction. Here, if the court, which in practice will adopt the choice of the prosecutor, decides to commit for trial the accused has to abide by the decision. If offered the option he can still demand trial by jury, or he may elect to be tried summarily.

A second category of offences where the defendant has a choice is created by s. 24 of the Criminal Justice Act, 1925, and the 2nd Sched. to that Act, which is in substitution for and extension of previous enactments of the same kind. Here the position is reversed. The offences listed are all indictable offences, and it is the duty of the court to commit for trial by jury unless, having regard to a variety of considerations all set forth in the section, it decides that the case can be suitably dealt with summarily. The choice may be put to the accused "at any time during the hearing of the charge": *ibid.*, sub-s. (2). It is quite common to offer the option at the commencement of the case.

It is a little surprising how readily courts of summary jurisdiction are to assume responsibility for the trial of and judgment upon an accused person, and how frequently the accused chooses summary trial. The explanation is that on the one hand the prosecution saves time and trouble, and usually considers the chance of a summary conviction greater than of conviction by a jury. The accused, if a person with a bad record, prefers a certain short sentence to the chance of a long one, and the first offender is so likely to be dealt with leniently that he prefers to provide the additional mitigating circumstance that he is saving everyone trouble and expense.

These considerations have their weight with professional advisers, and this ought to be so. The solicitor, or counsel, is the mouthpiece of the accused, and he must, in considering his client's interests, put himself so far as possible in his client's position.

But the matter is not always simple. A solicitor who frequently practises in a particular petty sessional division gets to know the idiosyncrasies of particular justices, and he is acting quite properly in putting this knowledge at the disposal of his client. If a bench "has a down" on a particular kind of offence, and is disposed to punish heavily for it, or even, with that peculiar twist of the mind that is too common, convict on slighter evidence than would be demanded in other cases, the matter has to be carefully weighed before advice is given.

It is not uncommon for sexual offences against children to produce a dangerous frame of mind in the magistrates. It is a heinous crime indeed to injure the young in such a peculiarly disgusting way. But unhappily the young are especially unreliable witnesses, and they are often, prior to their examination in court, subjected to leading questions by those who take their proofs of evidence. A small child finds difficulty in explaining any matter with which it is unfamiliar, and this difficulty is multiplied tenfold if it be shy. It will then snatch at any straw offered to it, and answer affirmatively questions which mislead it, and the court afterwards. Some women justices, in their loathing of the offence, are very apt to assume the guilt of the man in the dock. The writer has known at least one who went very near to holding the view that it would be better to risk convicting an innocent man than let the offence go unpunished.

When in any doubt as to the choice of tribunal, it is better to go to the jury. Trial by jury is the ancient and well-proved mode of trial. It has been rather the fashion in recent times to sneer at the jury, and it has, necessarily, serious defects. But for anyone who will not demand perfection, but will be content with reasonable efficiency, the jury, under the guidance of a patient judge, remains the best tribunal yet devised by the wit of man. The privilege of leaving to its determination the question of prison or liberty is not lightly to be discarded.

Grafting of English Equity on Colonial Law.

THE decision of the Judicial Committee of the Privy Council in the Ceylon appeal *Saminathan Chetty* v. *Poorten* [1933] A.C. 178, illustrates the modern tendency, salutary in itself although requiring restraint in its application, of the courts to supply *hiatus* in colonial law by grafts, if deemed necessary, even from the doctrines of English equity.

The material facts were the following:—

A syndicate purchased forest land in Ceylon, and conveyed it by deed to the respondent, who had provided the greater part of the price. A second deed of the same date recited the facts, and declared that the respondent should hold the property as absolute owner, with power to manage it, and to sell the lands for the best available price (the approval of the syndicate being necessary, however, in the case of any sale for less than 100 rupees per acre), to apply all moneys realised in payment of the sums due to him for the purchase price or expenses of management, and to pay over the balance *pro rata* among the syndicate. A year later, before any sale had taken place, the members of the syndicate sued claiming to redeem. The respondent settled with all of them except two, who were represented by the appellant.

In Roman-Dutch law, the foreclosure of mortgaged property was unknown, and its sale could not be effected without the consent of the debtor. The proper and only mode of realising a mortgage was to obtain a judgment on the mortgage debt and then take out a writ of execution against the property (Lee, "Introduction to Roman-Dutch Law," 3rd ed., p. 210). Provision is made for the exercise of this remedy in the Ceylon Civil Procedure Code (ss. 640 *et seq.*). But the Privy Council took the view that the effect of the two deeds above mentioned was merely to create, in favour of the respondent, a security for money advanced—there being imposed on him duties and

obligations in the nature of trusts—and held that the appellant was entitled to redeem the shares of the two plaintiffs on payment of their rateable proportion of the amount due to the respondent. This view derives strong support from the terms of the deeds themselves, and in particular from the requirement of the approval of the syndicate to any sale at a lower price than Rs. 100 per acre. But the problem was to find some principle of Roman-Dutch law that would cover a decision in this sense. The Privy Council solved this difficulty by the aid of the maxim "Once a mortgage, always a mortgage." A doctrine closely resembling this maxim of English equity had been foreshadowed in Ceylon itself as far back as 1891 in the case of *Siribohamy* v. *Rattanranhamy*, 1 Ceylon L.R. 36, and had been definitely laid down in the Transvaal in 1902, in *John* v. *Trimble*, 1 T.R. (Witwatersrand H.C.) 146. The facts in the latter case were these :—

The debtor had agreed with his creditor that the mortgaged property should be reconveyed to him if the debt were paid within two years. More than two years passed without payment. In spite of this, the debtor sought to redeem while the creditor sold the property to the defendant. The court held that, notwithstanding the agreement, the debtor was entitled to redeem from the defendant, and Innes, C.J., said, in effect, that to have enforced it would have been contrary to the policy of the law. This decision, with the aid of its predecessor in Ceylon in 1891, enabled the Privy Council to justify under Roman-Dutch law, what was clearly the correct construction of the deeds on which the fate of the appeal in *Saminathan Chetty* v. *Poorten* depended. The application of the rules of English law or equity to similar juridical problems is entirely desirable, when a real graft can be produced. It is only when assimilation is impossible that this expedient becomes judicial legislation and must be avoided.

Such affinities are closer and more numerous in different legal systems than is, perhaps, generally appreciated :—

"If an English and a French jurist," says Maître Pierre Lepaulle ("Trusts and the Civil Law," J.C.L., 3rd series, vol. 15, p. 34), "speak of trusts, there is a great probability that they will not understand each other. They will feel extremely remote from each other. If, however, they are interested enough to go beyond the mere appearance to see the reality, they discover with amazement, and with delight, that they are very close."

An illustration of this fact is supplied by the decision of the Privy Council in another Ceylon case, *Weerasekera* v. *Pieris* [1933] A.C. 190, which, like *Saminathan Chetty* v. *Poorten*, has just been reported.

It should be premised that in Ceylon the English law of trusts was long ago received into the law of the country, and that to-day the trust and the *fidei-commissum* exist side by side (*Suppramaniam* v. *Evampakurukal* (1922), 23 New Law Reports 424; *Narayanam Chetty* v. *Finlay & Company* (1927), 29 New Law Reports 65—a distinction preserved by the modern Ordinance (No. 9 of 1917, s. 3) which amends and defines the law of trusts in the colony. Moreover, while the Muhammadans of Ceylon have their own customary Code of 1806, they have, just as in India Muslim communities have adopted Hindu customs, incorporated into their system of law concepts borrowed from Roman-Dutch law, one of which is the concept of *fidei-commissum*. Although the *fidei-commissum* belongs essentially to the law of testaments and does not recognise the coincidence of "legal" and "equitable" ownership, which is the chief characteristic of the trust, Ceylon Muhammadans have frequently sought to graft *fidei-commissa* on donations *inter vivos* made under their own local law. In such cases, the courts have held (see *Rahiman Lebbe* v. *Hassen Ussan Umma*, 3 Ceylon W.R. 88) that the validity of the deed is governed by Muhammadan, and its construction by Roman-Dutch, law. Under the Muhammadan law, the taking possession by the donee of the subject-matter of the gift, either actually or constructively, is one of the conditions necessary to constitute a valid donation *inter vivos*.

With these preliminary observations, we may now turn to the facts in *Weerasekera* v. *Pieris*. By deed of 11th March, 1904, one Arisi Marikar purported to convey five-sixths of certain premises to his son, Salih Hadjiar, as a donation *inter vivos*, but burdened with what appeared to be a *fidei-commissum* in favour of Salih's sons—Abdul and Mohammed Hassen—whose interests were purchased by the plaintiff on 30th August, 1927. In the deed of 1904, Arisi Marikar had reserved to himself a life interest in the produce together with a right to cancel the deed, and deal with the property during his lifetime as if the deed had not been executed. At the date of execution, the property was subject to a lease for three years, on the expiry of which Arisi Marikar granted a further lease for a term of years. The defendant alleged that, on Arisi Marikar's death in 1908 or 1909, Salih Hadjiar had dealt with the property as owner. He had mortgaged it in 1913 to the trustees of one Rodrigo. In 1916, it was sold, in execution against Rodrigo, to his trustees, who, in 1929, conveyed it to the defendant. The plaintiff contended that the *fidei-commissum* in favour of the sons of Salih, to which the deed of gift of 1904 was subject, was valid, and that, on Salih's death in 1929, the five-sixth share devolved, through Salih's sons, on him by virtue of his purchase of their interests in 1927. The defendant's case, on the other hand, was that the reservation by Arisi Marikar of a life interest invalidated the deed of gift to Salih and consequently the *fidei-commissum* in favour of his sons, that Salih was absolute owner of the property, and that through him and his successors in interest the defendant had acquired title to it not only by the conveyance of 1929, but by prescriptive possession. The District Judge of Colombo held that the deed of gift of 1904 was valid, and that it created a *fidei-commissum* the benefit of which had passed to the plaintiff. This decision was reversed by the Supreme Court on the ground that the deed of gift was invalid by reason of the reservation of the life interest and the right of *inter vivos* revocation in favour of the donor, and of the absence of any delivery of possession, either actual or constructive, to the donee ((1931), 32 New Law Reports 176).

The Privy Council, on appeal, reversed the judgment of the Supreme Court of Ceylon, holding that it had never been the intention of Arisi Marikar to create a donation *inter vivos*, subject to the conditions and restrictions of Muhammadan law, that the case was governed by Roman-Dutch law, and that the *fidei-commissum* was not invalidated by the fact that there had been no delivery of possession to the donee. This decision rendered unnecessary any consideration of the question how matters would have stood if a different construction of the deed of 1904 had been arrived at. In the colonial courts, however, it was suggested that a solution of the difficulty might have been found in an adaptation of the English law of trusts (see *Umjad Ally Khan* v. *Mohumdee Begum* (1867), 11 Moo. Ind. App. 517; *Muhammad Abdul Ganni* v. *Fakhr Jahan Begum* (1922), I.L.R. 301).

[NOTE.—This is the last article received from the pen of the late Sir ALEXANDER WOOD RENTON, G.C.M.G., K.C., whose death occurred last Saturday. A short obituary notice appears at p. 444.—ED., *Sol. J.*]

THE PASSING OF THE GRAND JURY.

We reproduce from *The Times* the following remarks made by Avory, J., addressing the Grand Jury at the opening of the Hertfordshire Assizes on the 19th of the present month: "I regret," the learned judge said, "that this is apparently the last time I shall have the pleasure of addressing a Grand Jury of this county. You are to be sacrificed upon the altar of economy, and in my opinion the suggested saving of time and money to be accomplished by this change will not compensate for the loss of the time-honoured safeguard of the liberty of the subject. I have already expressed that opinion elsewhere, and lest it should be said that I am wasting time by discussing the matter, I will proceed at once to the business before the court."

Solicitor's Negligence in Litigious Cases.

In this article we propose considering how far a solicitor is liable to an action for negligence for failing to carry out his professional duties, and propose considering this subject under the following headings :—

(1) Who can sue ?
(2) What constitutes negligence ?
(3) When liability for negligence ceases ?

In order for a person to be able to bring an action for breach of contract there must be privity of contract and the action can only be brought by the person actually retaining the solicitor and not by a third party. Lord Campbell, in *Robertson* v. *Fleming*, 149 R.R. 321, 4 Macq. 167, dealing with the suggestion that there need be no privity of contract to establish a cause of action, states : " If this were law, a disappointed legatee might sue the solicitor employed by a testator to make a will in favour of a stranger, whom the solicitor never saw or before heard of, if the will were void for not being properly signed and attested."

Notwithstanding the fact that there must be privity of contract between solicitor and client for the purpose of bringing an action for negligence, it is important to remember that a solicitor on the record, whether in London as agent for a country solicitor, or in a district registry as agent for a London solicitor, has a general authority to compromise an action on behalf of his client, provided that he acts *bona fide* and reasonably, and not in defiance of his direct and positive instructions, and in either case the lay client will be bound, although there is no privity between him and the agent on the record : see *Re Newen, Carruthers* v. *Newen* [1903] 1 Ch. 812.

Dealing with our second heading, it is important to remember that although a solicitor is bound to use reasonable skill and diligence in the course of his duties, he is only liable for what the law calls " gross " or " crass " negligence, and is not answerable for mere errors of judgment on difficult points of law, or for merely giving wrong advice on a doubtful point. So that in *Faithful* v. *Kesteven*, 103 T.L.R. 56, where a solicitor erroneously advised a sale from a husband to his wife without registering the receipt and inventory as a bill of sale, the courts held that as this was a transaction between husband and wife and the registration of a bill of sale might have prejudiced the licence of the husband, who was a publican, the solicitor under all the circumstances was not guilty of gross negligence, and in *Purves* v. *Landell*, 12 Cl. and Fin. 91, 69 R.R. 46, where a solicitor mistakenly issued a warrant against defendants in Scotland, when the warrant should have been issued in England, Lord Campbell, after referring to the immunity of barristers, stated as regards a solicitor : " You can only expect from him that he will be honest and diligent ; and if there is no fault to be found either with his integrity or diligence that is all for which he is answerable. It would be utterly impossible that you could ever have a class of men who would give a guarantee binding themselves, in giving legal advice and conducting suits at law, to be always in the right."

But, on the other hand, where a solicitor failed to warn a client of the provisions of a well-known statute, which disentitled the plaintiff from bringing an action after a certain period of time, the solicitor was held to be guilty of negligence, and in *Fletcher* v. *Jubb* [1920] 1 K.B. 275, where a client instructed a solicitor to make a claim against a corporation and during the course of negotiations for a settlement the time ran out during which an action could be brought, it was held that the solicitor not having warned the client that the action must be brought within the time prescribed by the Public Authorities Protection Act, 1893, he was guilty of negligence. Notwithstanding this decision, it may be comforting to solicitors to know that the courts do not expect them to know the contents of every statute, Scrutton, L.J., in the case last referred to stating : " Now it is not the duty of a solicitor to know the contents of every statute of the realm. But there are some statutes which it is his duty to know, and in these days when the defendants in so many actions are public authorities, the Public Authorities Protection Act, 1893, is one of those statutes."

Dealing with the duties of solicitors, Bankes, L.J., in the same case points out, that they are under an obligation to bring to the discharge of their duties as solicitors reasonable care, skill and knowledge of the practice of the court, whose process they invoke on behalf of their client, and as a further guidance as to those duties, he referred to the dictum of Tindall, C.J., in *Godefroy* v. *Dalton* (1830), 6 Bing. 460, 31 R.R. 467, who states : " A solicitor is liable for the consequences of ignorance or non-observance of the rules of practice of this court : for the want of care in the preparation of the cause for trial ; or of attendance thereon with his witnesses ; and for the mismanagement of so much of the conduct of a cause, as is usually and ordinarily allotted to his department of the profession. Whilst on the other hand, he is not answerable for error in judgment upon points of new occurrence, or of nice or doubtful construction, or of such as are usually entrusted to men in the higher branch of the profession of the law."

It may be useful here to mention that a solicitor will not be guilty of negligence in bringing an action in a more expensive court when it might have been brought in a cheaper one unless there is a penalty attached for doing so, so that in *Barker* v. *Fleetwood Improvement Commissioners*, 62 T.L.R. 831, where a solicitor commenced an action in the Chancery Court of Lancaster which could have been commenced in the county court, the solicitor was held not guilty of negligence, Charles, J., stating : " The cases seem to me to establish that, where a solicitor recommends to sue in a court that has jurisdiction over the matter in question but where the client may incur a penalty as to costs even if successful, the solicitor may be held to have been guilty of negligence, if he has not advised his client as to the risk he runs of incurring that penalty. No case has been brought to my notice in which a solicitor has been held guilty of negligence where he has brought an action in a more expensive court, when he might have brought it in a cheaper court, which also had jurisdiction over the matter, but where there is no penalty incurred as to costs for bringing the action in the more expensive court."

And again, a solicitor employed by a managing partner of a business firm, to defend an action brought against the firm in the firm's name, has authority to enter an appearance in the name of each of the partners individually, and is not guilty of negligence in not keeping the partners, other than the managing partner, by whom he was employed, informed of the progress of the action : see *Tomlinson* v. *Broadsmith* [1896] 1 Q.B. 386.

On the other hand, solicitors should be warned that if they have not got their case ready for trial at the date of hearing, and in consequence an application has to be made for re-hearing, they may be ordered to pay all the costs of the trial including the costs of the application : see *Holden* v. *Holden & Pearson*, (1910), 102 T.L.R. 398.

In conclusion, dealing with our last heading, it is important to remember that an action for negligence against a solicitor whilst acting upon a client's retainer, is a cause of action arising out of contract, and the maxim *actio personalis cum moritur persona*, does not apply, so that the action survives and may be maintained against the personal representatives of the deceased solicitor : see *Davies* v. *Hood & Others* (1903), 88 T.L.R. 19.

BOROUGH OF WOLVERHAMPTON.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton, will be held at the Sessions Court, Town Hall, North-street, Wolverhampton, on Friday, the 14th July, at 10 o'clock in the forenoon.

Liquidators and Personal Liability.

THE position of a liquidator, as compared with that of a receiver and manager, was considered in the recent case of *Stead Hazel and Co.* v. *Cooper* (1933), 77 SOL. J. 117. The defendant had been appointed by the court as liquidator of Trent Mill (1920) Limited, in May, 1930, during the currency of a contract for the purchase of cotton from the plaintiffs. The contract was not disclaimed by the defendant, but in June, 1930, he arranged to pay for the bales after delivery, instead of paying in advance. The September instalment of goods was not accepted, either by the company or the liquidator, and the latter was accordingly sued for the price. The plaintiffs' case was that (1) the liquidator had incurred personal liability, as his letter in June (although headed "Trent Mill (1920) Limited, in Liquidation") was merely signed "D. Cooper, Liquidator," (2) not having disclaimed, under the Companies Act, 1929, s. 267, he had become personally liable on choosing to perform the contract. The defendant denied liability, on the ground that he had only acted as liquidator and/or agent for the company. Mr. Justice Lawrence observed that the position of a liquidator is different from that of a receiver and manager, even though both are appointed (and can also be dismissed) by the court. While both control the assets and perform the contracts of the company, the liquidator alone acts in its interests, while the receiver and manager acts on behalf of the debenture-holders only. It was therefore held that the defendant neither contracted nor received credit on his own behalf, and that he was accordingly not personally liable. As regards the disclaimer, it was pointed out that s. 267, *supra*, is silent as to any personal liability of the liquidator, in contrast to s. 54 of the Bankruptcy Act, 1914. Judgment was therefore given for the defendant with costs.

A distinction was drawn between the above case and *Burt, Boulton and Hayward* v. *Bull and Another* [1895] 1 Q.B. 276, in which an order for timber was signed: "For Joseph Bull, Sons and Co. Limited. Receiver and Managers, Edward C. Bull and Robert Jas. Ward." The first defendant had been appointed in a debenture-holder's action in the Chancery Division, and the second defendant was appointed to act jointly (on behalf of the unsecured creditors) on the withdrawal of a petition for winding-up. Mr. Justice Mathew gave judgment for the plaintiffs, and the decision was affirmed in the Court of Appeal. Lord Esher, M.R., pointed out that receivers and managers are not agents of the company, which neither appoints nor dismisses them. The inference is that they shall act on their own responsibility (and not as agents), otherwise nobody would be liable—certainly not the company, and still less the court. Lord Justice Lopes held that the question was one of fact, viz., upon whose credit the goods were supplied, and Lord Justice Rigby pointed out that the defendants could look for indemnity to the assets of the company.

The immunity of a liquidator had been established in *In re Anglo-Moravian Hungarian Junction Railway Company* (1875), 1 Ch. D. 130. The liquidator, in a compulsory winding-up, had appointed solicitors to act for him, but afterwards changed them under an order of the court—which also ordered him (by consent) to pay their taxed costs. The solicitors then sought to levy execution on the liquidator, but the vacation judge restrained them by injunction, which was upheld by the Court of Appeal. Lord Justice James observed that, (1) in a voluntary winding-up, the liquidator had long been held to be merely the agent for the company, and (2) there was no reason to make a distinction in the case of a compulsory winding-up. Lord Justice Mellish agreed that the consent order had not rendered the liquidator personally liable, and the appeal (with the concurrence of Lords Justices Baggallay and Brett) was accordingly dismissed.

The first-named case, *supra*, appears to be the first arising out of a liquidator's right of disclaimer—a provision imported from the bankruptcy law for the first time by the Companies Act, 1929.

Carriage Entrance over Pavement—A Householder's Right.

THE right to drive vehicles over the strip of highway reserved for foot passengers as a means of ingress and egress to and from the road will often constitute one of the chief ancillary factors in the enjoyment of residential or business premises. This right of access, which is distinct from an owner's right to use the highway as one of the public (see *Moore* v. *Great Southern and Western Rly.*, 10 Ir. C.L. (N.S.) 46; *Chamberlain* v. *Crystal Palace Rly.*, 2 B. & S. 605; and Lord Selborne's words in *Lyon* v. *Fishmongers Company*, 1 App. Cas. 662, 684), has for some time been regulated by statute, but questions have arisen both in regard to the right generally and to the extent to which the local authority is in a position to frustrate it.

Section 18 of the Public Health Acts Amendment Act, 1907, is in the following terms: "The provision and use of new means of access for any cattle, any beast of draught or burden, any waggon, cart, or other wheeled carriage exceeding four feet in width or two hundredweight in weight, to or from any premises fronting, adjoining, or abutting on any street which has become a highway repairable by the inhabitants at large, may, where that provision involves passage across or interference with any such part of the street as comprises a kerbed or paved footway, be allowed by the local authority subject to the following conditions (that is to say):—(*a*) Every person who intends to provide the new means of access shall give notice in writing of his intention to the local authority, and shall at the same time submit, for the approval of the local authority, a plan showing the position, gradient, and mode of construction of the intended means of access; (*b*) When the plan, with or without amendment, has been approved by the local authority, the person may, upon receiving notice of their approval, proceed to execute the necessary works, but those works shall be executed under the supervision and to the reasonable satisfaction of the local authority, and in accordance with the plan as approved by the local authority; (*c*) After the completion of the works the new means of access may be used, subject to the conditions which, in pursuance of any provisions of the law relating to highways, attach to the use for the like purpose of any carriage way forming part of a highway repairable by the inhabitants at large." This provision, which may be amplified or paralleled by local Acts, sets out the statutory position. Following is a short review of the authorities.

In *St. Mary Newington Vestry* v. *Jacobs* (1871), L.R. 7 Q.B. 47, Mellor, J., formulated the principle underlying these cases in the following terms: "The owner, who dedicates to public use as a highway a portion of his land, parts with no other right than a right of passage to the public over the land so dedicated, and may exercise all other rights of ownership, not inconsistent therewith; and the appropriation, made to and adopted by the public, of a part of the street to one kind of passage, and another part to another, does not deprive him of any rights, as owner of the land, which are not inconsistent with the right of passage by the public." The respondent in this case applied to the appellants for permission to take up the flags from the pathway in question and to replace them by a paved carriage-access to his premises which would have been more suitable for the conveyance of heavy machinery to his warehouse. Upon refusal he conveyed the machinery over the pavement in carriages or trolleys and thereby damaged the flags. The appellants thereupon, under the Highway Act, 1835, which by s. 72 imposed a penalty of 40s. over and above damage occasioned by wilfully riding upon a footpath, etc., took out a summons which was dismissed by the magistrates on the ground that the respondent's premises could not reasonably be enjoyed without access across the footway and that these rights of ownership and those of the public might be jointly exercised

consistently with the general welfare. This decision was affirmed by the Court of Queen's Bench. The respondent could not do anything which would constitute a derogation from the grant of the roadway, but the principle stated in the above excerpt of the judgment was the determining factor and the provisions of the Highway Acts and the Metropolis Local Management Act, 1855 (under which the appellants were surveyors), were to be read as subordinate to the paramount rights reserved by the owner.

The principle to be applied in construing Acts of Parliament relative to our subject-matter is brought out in *Attorney-General* v. *Horner* (1884), 14 Q.B.D. 245, and further emphasised by the words of Lord Atkinson in *Central Control Board (Liquor Traffic)* v. *Cannon Brewery Co.* [1919] A.C. 744. In the former case it was held that the Paving Acts of George III did not interfere with and were not to be construed as cutting down the area over which certain market rights were exercisable. "Now it is to be observed," remarked Brett, M.R., "that if those Acts have taken away and interfered with such rights they have done so without giving any compensation, and it seems to me that it is a proper rule of construction not to construe an Act of Parliament as interfering with or injuring persons' rights without compensation, unless one is obliged so to construe it." In the latter case Lord Atkinson referred to the canon of construction recognised in *Attorney-General* v. *Horner*, *supra*; *Commissioner of Police (Cape Colony)* v. *Logan* [1903] A.C. 355; *Western Counties Rly.* v. *Windsor and Annapolis Rly.* (1882), 7 App. Cas. 178, and many other cases. "That canon," the learned lord said, "is this: that an intention to take away the property of a subject without giving to him a legal right to compensation for the loss of it is not to be imputed to the legislature unless that intention is expressed in unequivocal terms."

There remain to be considered two cases where the position was regulated by local Acts. The question in *Tottenham Urban District Council* v. *Rowley* [1912] 2 Ch. 633, affd. [1914] A.C. 95, was whether the plaintiffs were justified in opening a fence and carting building materials across the part of a road intended to be appropriated for a footpath. The road lay at the northern boundary of the defendants' land laid out and developed as a building estate in accordance with a plan submitted to and approved by the plaintiffs and showing by dotted lines the position of the proposed footpaths. The main question, decided in the affirmative, was, had there been a dedication? It was not open to the defendant to say "I intended to dedicate to the public without giving any right to the adjoining owner." "Such a qualified dedication," said Cozens-Hardy, M.R., "if it be possible in law, which I doubt, must be established by clear evidence, and no such evidence is forthcoming in the present case." The owner of the land adjoining the road was invested with a private right attached to his property to gain access to the highway and, while the right must be exercised with due regard to the public rights, the mere fact that there might be a footpath at some future time adjoining the plaintiffs' property could not be said to disentitle them at reasonable times and to a reasonable extent to cross the footpath. Section 62 of the Tottenham Local Board Act, 1890, provided: "Every person desirous of forming a communication for horses or vehicles across any kerbed footpath so as to afford access to any premises from a street shall first give notice in writing of such desire to the local board and shall if so required by them submit to them for their reasonable approval a plan of the proposed communication showing where it will cut the footpath and what provision (if any) is made for kerbing the gullies and for a paved crossing and the dimensions and gradients of necessary works and the local board shall execute the works at the expense of the person making the application . . ." The plaintiffs being themselves the local authority could, it was pointed out, do what was necessary to comply with the section. In his judgment in the House of Lords, which affirmed this decision, Lord Dunedin said: "I think that if you have a road of this class as to which you come to the conclusion that there is dedication, it is dedication of the whole road subject only to the fact that it is going to be finished in a certain way, and that it is not dedication (a thing which I should think never was heard of in fact) of two parallel strips, one dedicated as a carriage-way and the other dedicated to foot passengers only."

Thus the act of dedication, while preserving to the dedicator (as a right not inconsistent with that of the public) the use for vehicles of the footway opposite a carriage entrance, involves also a similar right of entrance for those occupying premises on the other side of the way. What then is the scope of the statutes regulating such user?

This problem is elucidated by the recent decision in *Marshall* v. *Blackpool Corporation*, referred to in a "Current Topic," *ante*, p. 393. Except for the fact that the applicant is required to do the work himself under the supervision of and to the satisfaction of the local authority's surveyor, s. 62 of the Blackpool Improvement Act, 1879, is in practically the same terms as the section of the Tottenham Act reproduced above. It need not, therefore, be quoted verbatim. Section 111 of the same Act gives a right of appeal from the corporation's decisions to quarter sessions according to the provisions of the Public Health Act, 1875, s. 269. The plaintiff appealed from the decision of the corporation refusing to sanction the making of a communication for horses and vehicles over a footpath to the Lancashire Quarter Sessions, where it was held that the corporation was not entitled to consider on an application under s. 62, either (*a*) that the town planning and bye-laws sub-committee of the corporation had taken into consideration matters relating to the safety of the public and the convenience of pedestrians and vehicular traffic which might use the road in question; or (*b*) that the sub-committee had regard to certain powers which they hoped to obtain under a proposed town planning scheme, whereby a portion of the borough would be zoned for residential purposes only. A Divisional Court, consisting of the Lord Chief Justice, Avory and Branson, JJ., considered an appeal by the corporation from this decision [1933] 1 K.B. 688. Reference was made to Lord Atkinson's canon of construction and the contention that, if s. 62 was intended to interfere with rights of ownership, it must say so unambiguously was accepted. All the owner was required to do was to furnish a plan, he was not required to give particulars of proposed user. It could not be said that quarter sessions came to a wrong conclusion in point of law. The appeal was therefore dismissed.

As explained in a "Current Topic" in this issue (*ante*, p. 430) the Court of Appeal allowed an appeal from this decision holding, in effect, that while the hoped-for town planning scheme was irrelevant, the corporation was entitled, in considering the application, to have regard to the matters set out under (*a*) *supra*. This decision indicates that s. 62 of the Blackpool Improvement Act, 1879 (and in consequence other similar enactments), is not purely regulative. That section, it was held, deprived a frontager of his right at common law to enter by vehicles the roadway from any point of his land. The section did not empower the local authority to forbid access altogether, but in selecting the point of access they were justified in having regard to the safety of the public and the convenience of pedestrians and vehicular traffic. Were it not for this decision, one would, perhaps, have been justified in regarding statutory enactments of this nature as purely regulative. Indeed, Eve, J., in the Court of Appeal, delivered a dissenting judgment to this effect.

Sir ALEXANDER WOOD RENTON.

A memorial service for the late Master Sir Alexander Wood Renton will be held in Gray's Inn Chapel at 4.30 p.m. on Tuesday, the 27th June.

The Position of Mortgagees

of Undivided Shares on an Appointment of New Trustees in place of the Public Trustee.

[Contributed.]

The position of incumbrancers of undivided shares in connection with the appointment of new trustees in the place of the Public Trustee under para. 1 (4) of Pt. IV of the 1st Sched. to the Law of Property Act, 1925, is obscure, and seems to deserve more attention than has hitherto been devoted to it by text-book writers. It will be remembered that under Pt. IV, where, immediately before the commencement of the Act, land is held at law or in equity in undivided shares vested in possession, then, in cases not otherwise provided for, the entirety of the land vests (free from incumbrances affecting undivided shares) in the Public Trustee upon the statutory trusts (sub-para. (4)). Then follow provisoes to the effect that—

(i) The Public Trustee shall not be entitled to act in the trust unless and until requested in writing to act by or on behalf of " the persons interested in more than an undivided half of the land or the income thereof " ;

(ii) After the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in the place of the Public Trustee without his consent ;

(iii) " Subject as aforesaid, any persons interested in more than an undivided half of the land or the income thereof may appoint new trustees in the place of the Public Trustee with the consent of any incumbrancers of undivided shares (but so that a purchaser shall not be concerned to see whether any such consent has been given) . . . ; or such persons may (without such consent as aforesaid) . . . apply to the court for the appointment of trustees of the land . . . " ; and

(iv) " If the persons interested in more than an undivided half of the land or the income thereof do not either request the Public Trustee to act, or (whether he refuses to act or has not been requested to act) apply to the court for the appointment of trustees in his place within three months from the time when they have been requested in writing by any person interested so to do, then and in any such case, any person interested may apply to the court for the appointment of trustees in the place of the Public Trustee."

Three questions arise on the construction of these provisions, viz. :—

(*a*) Is an incumbrancer of an undivided share a " person interested in . . . the land or the income thereof," so that his concurrence with the owner of the equity of redemption in the incumbered share is necessary in a request under proviso (i) to the Public Trustee to act in the trust ?

(*b*) On an appointment of new trustees in the place of the Public Trustee under proviso (iii), is it necessary for an incumbrancer of the shares of the proposed appointors to join with the appointors in making the actual appointment of the new trustees, or is his mere consent to the appointment sufficient ?

(*c*) Do the words in proviso (iii) " with the consent of any incumbrancers of undivided shares " include incumbrancers of the shares not belonging to the proposed appointors, so that the consent of the incumbrancers of those shares (which may be called " the dissenting shares ") is required ?

The precedents in 1 K. & E., 13th ed., p. 174; 3 Prideaux, 22nd ed., p. 491, and at p. 625 of the Cumulative Supplement No. 4, 1930, to the second edition of the Encyclopædia of Forms and Precedents, are all framed on the assumption that the consent of an incumbrancer to the appointment is sufficient, and that it is unnecessary for him to concur in making the actual appointment. And the writer believes that this view has been generally accepted by the profession, as also has the view that the consent of an incumbrancer of a dissenting share is not required.

The twelfth edition of Wolstenholme and Cherry's Conveyancing Statutes is silent on both points. It is stated in a note on p. 491 of 3 Prideaux, 22nd ed., that : " *Semble*, the consent is only required in respect of mortgages affecting the shares of the appointors, they may know nothing of the title to the other shares, but when practicable the consents of all should be obtained." On the other hand, Mr. Withers in his article which appeared in this journal in April, 1932 (since reprinted as a pamphlet), expressed the opinion that the provision as to consent " is not limited to incumbrances in the shares in right of which the appointment is made," and the thirteenth edition of Key and Elphinstone contains a precedent (vol. I, p. 834) of the consent by an incumbrancer of the dissenting share, the consent being by the mortgagee of the share of C to an appointment of new trustees by A and B " being persons interested in more than an undivided half of the property."

It is, however, submitted that the expression " any persons interested in more than an undivided half of the land or the income thereof " include an incumbrancer of the shares as well as the owners of the equity of redemption, and that consequently the concurrence of the incumbrancer is necessary both in a request to the Public Trustee to act and in an appointment of new trustees.

Were this not so, the position of the incumbrancer would be difficult in the extreme. Debarred from the right of requesting the Public Trustee to act and of appointing a new trustee, he would, in default of action by " persons interested," be compelled to apply to the court for an appointment under proviso (iv) ; possibly to be met with the successful objection that " any person interested " (to whom the right of applying to the court is given by proviso (iv)) has the same meaning as in provisoes (i) and (iii), and that he is debarred from applying to the court.

There can, it is submitted, be little doubt that the words " persons interested in more than an undivided half of the land or the income thereof " are wide enough in their natural meaning to include an incumbrancer. What are the rights of an incumbrancer of an undivided share ? By para. 1 (9) of Pt. IV of the 1st Sched. the statutory trust for sale is not to be exercised without his consent.

Then by s. 35 the net proceeds of sale of land held upon the statutory trusts are to be held upon such trusts as may be requisite for giving effect to the rights of the persons (including an incumbrancer of a former undivided share) interested in the land.

Finally, under s. 102 a person who was before the Act a mortgagee of an undivided share in land has " the same power to sell his share in the proceeds of sale of the land and in the rents and profits thereof until sale " as he would have had in regard to the share in the land. And by the same section such a mortgagee has the " right to require the trustees for sale . . . to account to him for the income attributable to that share, or to appoint a receiver to receive the same from such trustees . . . "

It is true that by these provisions the mortgagee obtains no interest in the land as such or in the income of the land as such. But then, neither does the owner of the equity of redemption, the rights of both being limited to the receipt from the trustees of their respective shares in the proceeds of sale and of the net rents and profits until sale. This is indeed a necessary corollary to the doctrine that an undivided share in land can have no legal existence (ss. 1 (6) and 34). But s. 205 (*x*) recognises an interest in the proceeds of sale of land as an " equitable interest," and s. 102 recognises the interest of a mortgagee in the rents and profits. It seems, therefore, reasonably clear that the expression " persons interested in more than an undivided half of the land or the income thereof," if it is construed in its natural meaning, must include a mortgagee of an undivided share. But the question arises whether

the words " with the consent of any incumbrancers of undivided shares " in proviso (iii) are sufficient to justify a departure from the natural meaning of the words " persons interested," etc. It will no doubt be said that if incumbrancers are required to join in the actual appointment of new trustees, it would be otiose to require their consent to the appointment. But the words " any incumbrancers of undivided shares " are quite general, and must, it is suggested, include all incumbrancers, not merely incumbrancers of the shares of the proposed appointors. If this construction is adopted, the meaning of proviso (iii) becomes clear, viz., that—

(*a*) " any persons interested in more than half of the land or the income thereof " (to whom the power of appointing new trustees is given) include incumbrancers of the shares of the proposed appointors ; and

(*b*) incumbrancers of the dissenting shares must consent to the appointment.

This construction gives effect to the natural meaning of the words of the proviso, and is consistent with the prohibition by para. 1 (9) of a sale without the consent of the incumbrancer. It would be odd if an appointment of new trustees could be made without the consent and, possibly, against the wishes of an incumbrancer, who, the appointment having been made, could completely paralyse the action of the trustees by withholding his consent to a sale.

A learned friend has suggested to the writer that the words " *any* persons interested in more than one undivided half of the land or the income thereof " in proviso (iii) to sub-para. (4) mean " *any of* the persons interested," as opposed to " *all* the persons interested," so that if three persons were each interested in the same undivided shares (being more than a moiety), any one of such three persons could appoint new trustees.

The inconvenience of this construction is obvious. An unseemly race to be the first to make the appointment might result in a dead heat ! It is, however, submitted that the use of the plural " persons " in provisoes (i) and (iii) is deliberate, and that " any persons " in proviso (iii) means " all persons," and that " *the* persons " in proviso (i) and " *any* persons " in proviso (iii) have the same meaning. This is, I think, clearly shown by the wording of proviso (iv) to the effect that if " the persons interested " do not either request the Public Trustee to act, or apply to the court for the appointment of trustees, " any person interested " may apply to the court for the appointment of trustees.

The use of the words " any person " (in the singular) in the latter part of proviso (iv) is in marked contrast with the words " the persons " in the earlier part, the latter words clearly referring to both the provisoes (i) and (iii).

It is suggested that, pending a judicial decision on the point, the cautious draftsman of a deed appointing new trustees under proviso (iii) should require incumbrancers of shares of the proposed appointors to join in the actual appointment and the incumbrancers of dissenting shares to consent to the appointment.

Company Law and Practice.

Number of Members of a Company.

THE number of members of a company may be of importance for some purposes, and it occurs to me that it may possibly be useful to deal shortly with this question of numbers. Not that the various provisions to which I am going to refer are at all likely to provide an entirely coherent article; some of them are in no way related to the others except by reason of the fact that they deal with numbers, a reason of a rather illogical variety. But it may nevertheless be convenient to have this collection under one heading, and I therefore propose to make it.

One advantage of this particular subject is that one is able to begin at the very beginning, namely, s. 1 (1) of the Companies Act, 1929, which provides that any seven or more persons, or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requirements of the Act in respect of registration, form an incorporated company with or without limited liability. In the case of a company having a share capital, no subscriber of the memorandum may take less than one share : Companies Act, 1929, s. 2 (4) (*b*). Thus we reach, by easy stages, this point, that a public company (I use this convenient expression, although it is not used in the Act, and, strictly speaking, one ought to say a company not being a private company within the meaning of the Act) must start with at least seven members, each holding at least one share, and a private company must start with at least two members, each holding one share, though perhaps before making these deductions I ought to have referred to s. 25, which provides that the subscribers of the memorandum of a company are to be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members. This is a somewhat interesting provision in that it has the effect of binding the subscribers to the memorandum by contract to an entity not in existence at the time when they subscribed to the memorandum.

Now a company starts its career with the number of members to which I have already referred ; is it bound to continue with that number ? Let us see what s. 28 says :—

" If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor."

A pretty severe penalty, you may say, and certainly one which is calculated to deter persons from carrying on business in such circumstances. But there underlies this section a further risk which may not be at first sight apparent. Section 26 defines a private company, and I need not here trouble my readers with that definition, but the next following section, s. 27, must be referred to : s. 27 (1) says that if a company, being a private company, alters its articles so that they no longer include the provisions which they need to under s. 26, it is, as on the date of the alteration, to cease to be a private company, while s. 27 (3) says that, where the articles do include the private company provisions, but default is made in complying with them, the company is to cease to be entitled to the privileges and exemptions conferred on private companies under (*inter alia*) s. 28. So that, under s. 28, a member of a private company will become liable where there are, say, six members, if all the private company provisions in the articles are not being complied with.

In determining, for the purposes of s. 28, whether there are less than two, or less than seven members, as the case may require, the case of *Re Bowling & Welby's Contract* [1895] 1 Ch. 663, may be in point. I need not trouble to deal with the facts of that case, or with the result, but it seems to suggest that the legal personal representatives of a deceased member and the trustee in bankruptcy of a bankrupt member are not to be counted for the purposes of any such calculation.

But the provisions of s. 28 are not the only ones designed to prevent the carrying on of business by companies deficient in membership, for s. 168 (4) says that a company may be wound up by the court if the number of members is reduced, in the case of a private company, below two, or, in the case of any

other company, below seven. It should be mentioned here that s. 168 (4) is one of the sections referred to in s. 27 (3), the provisions of which I have set out in outline above, so that on default in complying with the private company provisions the provisions of s. 168 (4) apply as if the company were not a private company. Either a creditor or a contributory can present a petition on this ground, indeed, it is one of the two alternative factors which must be present when a contributory petitions for winding up, the other being that the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder (s. 170 (1)).

In the bad old days, before the 1st November, 1929, there was no obligation upon a company to have directors, but s. 139 now provides that every public company registered after the commencement of the Act must have at least two directors. An illustration of the old practice (which can still be applied to all companies registered before the 1st November, 1929, and to all private companies registered on or after that date) is to be found in *Re Bulawayo Market Co.* [1907] 2 Ch. 458; but it seems reasonably plain that it would not be possible, on the true construction of the section, to register a company as a private company, and then change it to a public company, but retain the advantage (if such it be) of not being compelled to have directors. I have, on more than one occasion, had the opportunity of referring to the definition of a director in the Act, and of comparing it with the even better known definition of an archdeacon; it (the definition of a director) will be found in s. 380 (1).

There are certain statutory provisions which represent in a sense the converse of those already enumerated, and these are the ones which prohibit partnerships with more than twenty, or, in the case of banking partnerships, with more than ten members. These are now to be found as ss. 357 and 358 of the Companies Act, 1929; the earlier one provides that no company, association or partnership, consisting of more than twenty persons, shall be formed for the purpose of carrying on any business (other than banking) that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under the Companies Act, 1929, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within the Stannaries and subject to the jurisdiction of the court exercising the Stannaries jurisdiction. Section 358 is similar in its terms, save that it deals with banking and the maximum number of persons is ten.

There is, in fact, a good deal of authority in connection with this restriction on the numbers who may carry on business with a view to gain, and this I propose to leave to be dealt with on a future occasion.

A Conveyancer's Diary.

Settled Land Held on Trust for Persons in Undivided Shares.

Much controversy has ranged round s. 36 of the S.L.A., 1925, and the pundits have been by no means agreed about it. In my own humble way I ventured, both in this column and elsewhere, to express an opinion to which I adhere and for which there is now judicial authority.

I am led to refer to this section again because yet another question seems to have arisen upon it which is by no means easy of solution.

I do not think that I need make any apology to my readers for reminding them what the bother was all about in the first place. I will then deal with the further point which, I confess, is new to me.

In order to show what the difficulties arising are, I must perforce quote the section almost *in extenso*.

"(1) If and when after the commencement of this Act settled land is held in trust for persons entitled in possession under a trust instrument in undivided shares, the trustees of the settlement (if the settled land is not already vested in them) may require the estate owner in whom the settled land is vested (but in the case of a personal representative subject to his rights and powers for purposes of administration) at the cost of the trust estate to convey the land to them, or assent to the land vesting in them as joint tenants, and in the meantime the land shall be held on the same trusts as would have been applicable thereto if it had been so conveyed to or vested in the trustees.

"(2) If and when the settled land so held in trust in undivided shares is or becomes vested in the trustees of the settlement, the land shall be held by them . . . upon the statutory trusts.

"(3) If the estate owner refuses or neglects for one month after demand in writing to convey the settled land so held in trust in undivided shares in manner aforesaid . . . the court may on the application of the trustees of the settlement make an order vesting the settled land in them on the statutory trusts."

Now, all that seems to be plain enough, and I always thought that it was. But the trouble arose by reason of para. 2 of Pt. IV of the 1st Sched. to the L.P.A., 1925, which reads:—

"Where undivided shares in land, created before the commencement of this Act, fall into possession after such commencement and the land is not settled land when the shares fall into possession, the personal representatives (subject to their rights and powers for purposes of administration) or other estate owners in whom the entirety of the land is vested shall by an assent or a conveyance give effect to the foregoing provisions of this Part of this Schedule in like manner as if the shares had fallen into possession immediately before the commencement of this Act and in the meantime the land shall be held on the statutory trusts."

Let us take the very ordinary case of land which, under a settlement created before 1926, is held on trust for A for life, and after his death for his children in equal shares. A manages to survive the catastrophe of the commencement of the 1925 legislation, but dies soon afterwards. What are his personal representatives to do?

There have been two opinions expressed in the books and numerous articles in the legal journals.

On the one hand it has been said in effect that s. 36 applies to such a case, and para. 2 of Pt. IV of the 1st Sched. to the L.P.A., 1925, is intended only to apply to very exceptional cases not coming within s. 36. That was the view taken by the learned editors of "Wolstenholme and Cherry's Conveyancing Statutes" (see 11th ed., vol. I., p. 510).

On the other hand many (I think most) writers thought differently. The late Mr. Cyprian Williams, for example, considered that s. 36 only applied where the land remained settled land at and after the time when the undivided shares had fallen into possession ("The Contract of Sale of Land," p. 236).

That view was, of course, founded upon the *dicta* of Romer, J., in *Bridgett and Hayes' Contract*, and, I must say, logically so.

However, Maugham, J., reverted to common sense, and held that s. 36 applied to the ordinary case. The decision was given in *Re Cugny's Will Trusts* [1931] 1 Ch. 305. The case is not satisfactorily reported, the importance of the decision not, apparently, having been appreciated.

The facts in that case were that by her will a testatrix devised property to her trustees upon trust to pay the net income arising therefrom to her daughter during her life

and after her death for the children of her daughter in equal shares, the shares of the female grandchildren of the testatrix being settled. The testatrix died in 1905. The daughter of the testatrix died in 1929, having had two children, who had attained vested interests under the will of the testatrix. I think that is all that is necessary to extract from the report which in the statement of facts went into details which had nothing whatever to do with the question at issue. It appeared also that the personal representatives of the testatrix were also the executors of her daughter, and Maugham, J., is reported to have decided as follows: "I will decide that s. 36 of the Settled Land Act, 1925, applies, and will accordingly declare that the plaintiffs, as executors of Ethel Mews" (the daughter of the testatrix) "ought pursuant to that section to execute a vesting assent in favour of themselves as trustees of the testatrix's will. In so deciding I accept the view of para. 2 of Pt. IV of the 1st Sched. to the Law of Property Act, 1925, expressed in the note to the paragraph in 'Wolstenholme and Cherry's Conveyancing Statutes,' 11th ed., vol. I, p. 510."

Of course, I entirely agree with the decision of the learned judge, except that I see no reason why persons should assent in their own favour, which strikes me as a Gilbertian proceeding. There is, moreover, nothing that I know of in any statute which requires them to do so. Apart from that, however, supposing the executors of the deceased tenant for life and the trustees of the settlement to have been different persons, then I agree that the trustees of the settlement would be entitled to call for a conveyance or assent (which is the same thing) in their favour.

But see what a ridiculous position arises.

The trustees of the settlement *as such* are entitled, on the death of the tenant for life, to call for the legal estate to be vested in them under s. 36 (1). If, however, those trustees on the same occasion apply for a special grant under A.E.A., s. 22 (1), they will be told that they are not such trustees, and there is no settlement!

The further point which has just been put to me by an eminent conveyancer is, what exactly is the meaning and effect of the words "in the meantime the land shall be held on the same trusts as would have been applicable thereto if it had been so conveyed to or vested in the trustees"?

The question arose as follows: A tenant for life died, and the beneficial interest passed to a number of persons in undivided shares. There were not and never had been any trustees for the purposes of the S.L.A. There was no duty payable on the death of the tenant for life as estate duty had been paid on the death of his wife. Do the personal representatives of the late tenant for life hold "in the meantime" upon the statutory trusts or not? At first I thought that that might be so, but having regard to the wording of the section it seems to me that they do not, nor have they any right to sell, as there are no purposes of administration requiring them to do so. In the circumstances it seems that the only way in which a title can be made is by joining all the persons beneficially interested. If that cannot be done trustees for the purposes of the S.L.A. must be appointed, and the personal representatives of the tenant for life hold the legal estate as bare trustees for the trustees of the settlement, who already hold the equitable estate in the entirety upon trust for sale.

I hope, however, to go further into this in a future Diary, but I may say that I have no doubt at all that what the draftsman meant was that any person in whom the legal estate in the entirety of the property was for the time being vested should hold it upon the statutory trusts. That, I have no doubt, was his object, whether he has achieved it is another matter.

Alderman Thomas William Stuchberry, solicitor, of Maidenhead, for twenty years Coroner for Maidenhead District, left £15,160, with net personalty £10,896.

Landlord and Tenant Notebook.

Ways over Lessor's Adjoining Property.

It sometimes happens that a landlord, living next door to his tenant and being on friendly terms with him, permits him to use paths or other facilities and conveniences on his (the landlord's) premises, and that at a later date the tenant or his successor claims to be legally entitled to use the facilities so enjoyed. It is then that the principle that a tenant cannot acquire, by user, easements over land belonging to his landlord, comes into play. Several illustrations were given within a short period by cases decided in the last century.

In *Polden* v. *Bastard* (1865), L.R. 1 Q.B. 156, the plaintiff owned and occupied a house left to him in 1848 by his aunt, who had lived in it, and devised it to him by the description: "the house I now live in, with the outhouse, garden, and orchard in my own occupation." She had also owned the house next door, which she had let to one T.A. during her lifetime, and this she had devised to a niece, describing it as "the house, outhouse and gardens as now in the occupation of T.A." The niece had sold it to the defendant, who proceeded to draw water as and when required from a pump in the plaintiff's garden, and, when the plaintiff built a fence to put an end to this practice, broke it down. The defendant was able to establish that the practice objected to had been carried on by T.A. during the testatrix's lifetime and with her knowledge, but as he (T.A.) had been her tenant, this plea did not avail him. An argument that the words of the will had created an easement was negatived, "as now in the occupation of" not being the equivalent of "as now enjoyed." At the same time, the "as" seems to have been rather misleading.

Then, in *Gayford* v. *Moffatt* (1868), L.R. 4 Ch. Ap. 133, the plaintiff, a vintner and assignee of a long lease, occupied one of those sprawling sets of premises not uncommon in the City of London. The lease gave him a counting-house, vaults and cellars in one house, and vaults and cellars in the next, and contained the then usual general words, including "all ways, paths, passages, easements, drains and appurtenances." The vaults were approached through a courtyard extending along both houses, and the plaintiff had been in the habit of using this courtyard not only as a means of access but as a depository for packages. The defendant, who had been the plaintiff's superior landlord, purchased the mesne lessor's interest and proceeded to build in the courtyard. The plaintiff objected, alleging that the proposed building would deprive him of space required for turning vehicles and depositing packages, and sought an injunction. His claim was based on user and/or grant. In the Vice-Chancellor's Court, he succeeded, except as regards the space claimed for depositing packages. But on appeal, it was held that he could have no claim based on user, for possession of the demised close which would have been the dominant tenement was the possession of the landlord, and a tenant cannot acquire an easement over another close belonging to the same landlord. As regards the grant, it was held that it did give a way of necessity across the yard, with which, however, the proposed building did not interfere.

The case of *Brett* v. *Clowser* (1880), 5 C.P.D. 376, led to the examination of a certain amount of history. The plaintiff was tenant of a public-house adjoining a road skirting Hampstead Heath; the defendants were a tenant of the same landlord of property including the road, and the landlord. In 1857 the plaintiff's premises had been granted to one H. for a term of twenty-one years. In 1867 a building agreement had been made between the landlord and the other defendant for the development of the property at the back, and H. and the builder came to an arrangement under which H.'s customers were permitted to cross the road to get to or from the heath, the consideration being the giving up by H. of part of his tea gardens, to be incorporated in a private road

by the builder. This arrangement was in force in 1878, when H.'s lease was forfeited, and a lease was granted to the defendant builder under his agreement. The plaintiff had taken his lease shortly before, being the successful bidder at an auction. The auctioneer had mistakenly described the offer as including the now disputed right of way, but the lease had contained the usual general words only. It was held that the landlord was not liable for the auctioneer's innocent mistake. As regards the claim against the builder, the plaintiff relied on necessity and on estoppel owing to the user from 1867 to 1878; but necessity was negatived by the facts, and the answer to the estoppel contention was the agreement with H., made for good consideration, and limited to the duration of H.'s lease.

Sale of Grass Keep.

Discussing this subject in the "Notebook" of 6th May last (77 Sol. J. 315), I referred to the then recent county court case of *Allen* v. *Chambers*, reported in the "County Court Letter" of 1st April (77 Sol. J. 230), in which a landlord recovered damages for the sale of grass keep by his tenants under circumstances held to amount to a breach of covenant not to sub-let. I learn that this decision has since been reversed by the Divisional Court, not on the ground that no under-tenancy had been conferred (though Acton, J., did say that he thought the arrangement amounted merely to a licence), but because the facts were that the lessor had himself purchased the eatage, through his bailiff. His explanation was that he wanted to protect his property, but as the Divisional Court held, the covenantee, being a party to the breach, could not recover damages for it. This proposition is, indeed, a corollary to those referred to in the "Notebook" of 15th and 22nd November, 1930 (74 Sol. J. 765, 782), "Release of Covenants by Acquiescence," and "Suspension of Right to Enforce Covenant."

Our County Court Letter.

THE CONTRACT OF AGISTMENT.

The pasturing of sheep at "halves" implies that, if a farmer takes another's flock to pasture and shepherd (over a year) he receives in exchange half the lambs and half the wool. In the recent case of *Townsend* v. *Bateman* at Rugby County Court, the claim was for £47 10s. as damages for breach of a contract (made in September, 1932) whereby the plaintiff had taken forty sheep and a ram, but (by reason of the removal of the flock) the plaintiff had lost his "halves," viz., the lambs at 30s. each and wool at 4d. or 5d. a lb. The defendant's case was that (*a*) the terms of the agreement were "halves," and that no other sheep were to be pastured; (*b*) nevertheless fifty more sheep were brought into the field by November; (*c*) the defendant therefore removed his sheep, which were only restored to condition by the expenditure of £8 15s. upon artificial food; (*d*) the average value of store lambs was 21s. or 22s. each, while the wool might make 4d. to 4½d. per lb. His Honour Judge Drucquer held that there was no condition against the non-pasturing of other sheep, and judgment was therefore given for the plaintiff for £5 10s. and costs. Compare the "County Court Letter" under the above title in our issue of the 5th April, 1930 (74 Sol. J. 213).

VALIDITY OF BILL OF SALE.

In *Brown* v. *Brown*, claimant Brown, recently heard at Leeds County Court, the plaintiff had obtained judgment against his brother for £539, and had levied execution upon furniture. The latter was claimed by the father of the parties, who (in 1929) had lent £150 to the defendant. On a further loan being advanced, a bill of sale (comprising the furniture) was granted as security, but the plaintiff contended that the consideration was not truly stated. The claimant admitted having had £47 10s. in part repayment of principal, but the defendant contended that the payments were on account of principal and interest. Mr. Registrar Pullan, having compared the bill of sale with the original loans and the amount repaid, held that the true consideration was not stated, and (as the bill of sale was therefore invalid) the claim was dismissed, with costs. Compare "Receipt as Bill of Sale" in the "County Court Letter" in our issue of the 25th March, 1933 (77 Sol. J. 211).

DISSOLUTION OF PARTNERSHIP.

The need for explicit partnership agreements was recently illustrated at Tiverton County Court in *McLachlan* v. *Stewart and another*. The plaintiff's case was that (1) in August, 1930, he had agreed (on the first defendant's suggestion) to form a partnership pending the formation of a company; (2) the first defendant had always referred to "my business" and "my nurseries," but it transpired that the land belonged to his wife (the second defendant), who paid £60 a year in mortgage interest; (3) she also negotiated for a shop (although the firm paid the rent), and from Easter, 1932, she participated in the firm's discussions; (4) as the plaintiff had gone into partnership with "the owner of the business," the second defendant was therefore liable to account to the firm. The first defendant's evidence was that (*a*) he had always emphasised that the land was not his, but his wife's; (*b*) the firm had therefore agreed to pay her £60 a year, while £10 was to be paid to the plaintiff for rent of his 1½ acres, and £5 to the defendant for rent of his three-quarters of an acre; (*c*) at the end of 1932 the firm's debts were £800, besides £475 owing to the second defendant. His Honour Judge The Hon. W. B. Lindley held that (1) the only partners were the plaintiff and the first defendant; (2) the plaintiff's capital was £50, paid to the firm on the 1st October, 1930; (3) the second defendant was not entitled to £60 a year from the firm. A declaration was made that the partnership was determined on the 25th March, 1933, and that the business (including any goodwill) was to be sold by the 14th July. An inquiry was directed as to the extent to which the plaintiff had agreed to contribute his garden stock to the firm.

Practice Notes.

[The Rules of the Supreme Court (No. 1), 1933, which appear in full under the heading of Rules and Orders elsewhere in this issue, are accompanied by an explanatory memorandum which clearly sets out the intention and effect of the new Rules and amendments. We take the opportunity of publishing this Memorandum in full below, instead of the short explanatory note upon new Rules from time to time appearing in this column, and of expressing our appreciation to H.M.S.O. for a most useful publication and to the unknown compilers for its clarity and helpfulness.]

THE RULES OF THE SUPREME COURT (No. 1), 1933.

Explanatory Memorandum.

1. The accompanying Rules have been prepared with a view to giving effect to such of the recommendations of the Business of the Courts Committee, presided over by Lord Hanworth, M.R.,* as fall within the powers of the Rule Committee of the Supreme Court, with the exception of certain recommendations which, though they fall within those powers, have, by reason of their importance or far-reaching nature, been included in the Administration of Justice (Miscellaneous Provisions) Bill now before Parliament; and to make certain alterations in procedure which are either consequential upon the recommendations of Lord Hanworth's Committee or have been brought into greater prominence by reason of the changes, or proposed changes, in the law resulting from that Committee's recommendations.

*Cmd. 4265.

Specially Endorsed Writs.

2. The amendments to Order III and Order XIV and to Order XX, Rule 1 (Nos. 1, 2, 3, 4 and 5 of the accompanying Rules), are designed to give effect to Recommendation 15 of Lord Hanworth's Committee "that at the option of the plaintiff the use of a specially endorsed writ and summary judgment (Order XIV) should be extended to all actions, except those to which the New Procedure Rules do not apply (Order XXXVIIIA, Rule 1)."

Summons for Directions.

3. The amendment to Order XXX, Rule 1, and the second amendment to Order XX, Rule 1, Order XXXI, Rules 6 and 8, Order XXIII, Order XXVII, and Order XXX, Rule 8, carry out the recommendations in paragraphs 21 and 22 of the Report "that pleadings should be exchanged according to Rule and that the summons for directions should not be taken out before pleadings," and that "the time for delivering the statement of claim and defence should be shortened respectively to twenty-one and eight days," though upon a re-examination of the times allowed in the present Rules, it has not been found possible to adhere strictly to the number of days recommended by the Committee.

Evidence and Admission.

4. The amendment of Order XXX, Rules 2 and 7, is designed to carry out the recommendation in paragraph 28.

Construction of Statutes, etc.

5. The new Rule inserted as Rule 1A of Order LIVA is designed to carry out the recommendation in paragraph 29.

Payment into Court.

6. The Amendments of Order XXII do not arise directly from any recommendation made by Lord Hanworth's Committee. They are designed to amend and simplify the procedure relating to payment into and out of Court. The question whether it is expedient that the Judge at the trial should know that there has been a payment into Court, and, if so, whether he should know the amount of that payment, has been the subject of considerable professional discussion. If the provisions of the Administration of Justice (Miscellaneous Provisions) Bill relating to trial with a jury in civil causes becomes law, it may be expected that there will be an increase in the number of causes tried before a Judge alone; and the question, therefore, will assume still greater importance, though the new Rules are equally applicable whatever view Parliament should take of the proposal now before them.

7. The reasons for withholding from a jury the knowledge that the defendant has paid money into Court are applicable, no doubt with less force but nevertheless with the same logic, to withholding such knowledge from the Judge until such time as the question of liability and amount of damages has been decided.

8. There is no reason for thinking that such knowledge is of any assistance to the Judge in determining those two issues according to law and the evidence. On the other hand, it is unfair to the Judge that, in weighing the considerations of law and fact as to liability, he should be burdened by the duty of shutting out from his mind the fact that the defendant has paid money into Court in respect of the claim, or that, in weighing the considerations as to quantum of damages, he should be under the difficult duty of disregarding the fact that the defendant has paid in a certain sum.

9. The knowledge of a payment into Court and the amount of that payment may be essential factors in determining the incidence of costs; and it is necessary, therefore, that these matters should be within the cognisance of the Judge before he makes an order as to costs and that the judicial discretion as to costs should be at large.

10. In two classes of cases, however, the Judge must have knowledge as to the payment, namely, where the defence sets up tender before action, because readiness to pay is in the essence of tender, and, where a plea under Lord Campbell's Act (the Libel Act, 1843 (6 & 7 Vict. c. 26, s. 2)) is filed, because of the provisions of the Libel Act, 1845 (8 & 9 Vict. c. 75, s. 2).

11. The present Rules, therefore, amend Rules 2 and 22 of Order XXII, so that, except upon a defence of tender before action, or where a plea under the Libel Acts, 1843 and 1845, has been filed, the fact that payment into Court has been made and the amount so paid in shall not be disclosed to the Tribunal in pleadings or otherwise until liability has been established and the quantum of damages has been finally assessed.

12. An amendment of Rule 6 has been made giving to the Judge a discretion in awarding costs where there has been a payment into Court, and the last sentence in Rule 22 is omitted as having become superfluous.

Payment into Court in Defamation Actions.

13. Before 1883, payment into Court could be made with a denial of liability in cases of defamation as in other cases, but the Rules were altered in this respect because of the distinctive characteristics of actions for libel and slander. These distinctive characteristics must continue to be recognised, and a plaintiff who wishes to vindicate his reputation must be protected from embarrassment, but, subject to the safeguards mentioned hereafter, there appears to be no objection to removing the exception. The plaintiff is free to accept the payment or to go on with his action; and if the Judge has a complete discretion as to costs, the plaintiff who recovers less than the amount of the payment will not be penalised in a proper case for proceeding to clear his name.

14. Rule 1 has, therefore, been amended so as to allow money to be paid into Court in libel and slander cases with a denial of liability, provided that, in accordance with the recommendation already set out, a complete discretion over costs is given to the Judge.

15. For a further protection to the plaintiff, a new Rule is inserted enabling him, where he takes money out of Court in a defamation action, to obtain the leave of a Judge to mention the matter in open Court. This would often suffice where the plaintiff is satisfied with the amount but justifiably desires to be publicly vindicated. His statement, however, should only be in the terms approved by the Judge giving the leave.

Payment out.

16. At present where money is paid into Court with an admission of liability (whether in an action for defamation or any other action), the plaintiff can take out the money so paid in and proceed with his action, knowing that his only risk is to be mulcted in costs and that he cannot be ordered to repay any part of the sum taken out. This is felt as a special hardship to the defendant in defamation actions because he can in those actions only pay in with an admission of liability. But it may be a hardship to a defendant in any class of action. It appears fair that the plaintiff should make his election between taking the money out in full satisfaction and leaving it in Court to abide the result of the action, and accordingly Order XXII, Rules 5 and 6, have been amended so that a plaintiff will not be able to take money out of Court except in full satisfaction of the cause of action in respect of which it is paid in.

17. The amendments also provide for the times at which the payments in may be made and payments out may be taken, and make certain consequential amendments in the present procedure.

[NOTE.—Copies of the Rules (S.R. & O. 1933 No. 534/L14) and Memorandum are obtainable directly from any branch of H.M. Stationery Office or through any bookseller. Price 2d. and 1d. respectively.]

Mr. George Herbert Brierley, solicitor, of Bromham, Beds, left £8,271, with net personalty £7,100.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

At East Mauduit, in Northamptonshire, on the 29th June, 1566, Henry Yelverton was born into the bosom of a legal family. His father was a rising barrister destined to attain a King's Bench judgeship; his grandfather had been Reader at Gray's Inn, and higher up the family tree there was a Sir William Yelverton, who had been a judge in the days of Henry VI and Edward IV. Early in life he received warm appreciation from Cecil, Earl of Salisbury, who said to him: "Indeed, I must say your father's education of you that have made you so lively resemble himself, for you have good elocution and sound reason whereby the apprehension of them that hear you is made more active and so hath your father, which is a great merit in the professors of the law." In the first Parliament of James I he represented Northampton, and his political career did not run smoothly. In the constitutional quarrels of the time he began by falling foul of the King, until in 1613, he was won over to the Crown and succeeded Bacon as Solicitor-General. When, in 1617, the philosopher attained the Great Seal, he again succeeded him as Attorney-General. His fall came in 1620 when a difference with the Government brought about his fining, imprisonment and dismissal from office. However, he was far from ruined, and on the accession of Charles I was appointed an additional judge of the Court of Common Pleas, holding his place till his death in 1629.

THE LADY CHANCELLOR.

So Lord Sankey, according to certain *obiter dicta* which fell from him at the Roedean School prize-giving, considers it possible that one of the young ladies there present may some day succeed him in his great office. It remains for us to wait and see whether she will model her conduct on that of Georgina, Lady Slate, first Lady Chancellor of England, at whose proceedings a Misleading Case of Mr. A. P. Herbert recently provided a prophetic glimpse. Having shaken the House of Lords by ordering the removal of the Woolsack ("the fantastic piece of furniture on which I sit") she thus declared to the Bar her policy: "I have climbed to this giddy height by hard work and hypocrisy following the rutted tracks of your profession . . . I have quoted your musty precedents, defended your pompous principles and plentifully imitated that masculine logic of which you are so proud. But all the time I was laughing up my capacious sleeve. And now that I am at last High Priestess of the Law, there is going to be an alteration." Or will the first Lady Chancellor rather take after Ermyntrude first (and last) Viscountess Boole, who heard the great appeal in *Petre* v. *Blagden* in Mr. Belloc's "Mr. Petre"? Shall we see "Lady Boole sitting on the Woolsack, a squat, alert little woman with grinning eyes and queer little fin-like movements of the hands"? At the end of that case, she "went to the Woolsack and in beautifully distinct, silvery articulation, spoke for some hours, words meaningless to mortal man. But it was one of the great judgments of our time and has been the basis of the law ever since."

BIGAMY'S APOLOGIES.

Of all offences in the criminal calendar, bigamy sometimes produces the oddest apologies. Thus, at the last Chelmsford Assizes, when a man who had succeeded in acquiring four wives, running concurrently, was found guilty, it was urged on his behalf that he had had a troubled life. Mr. Justice Horridge replied: "I should think he would expect a troubled life if he married four women." The prisoner was sent to a place where matrimonial troubles are unknown and his sentences on the charges run, unlike his wives, consecutively. Perhaps in his heart he was like that fourfold bigamist once convicted at Dublin who told a judge, marvelling that he should have had the heart to delude so many women, "Plaze, yer lordship, I was tryin to get a good wan." There is also the story of the young counsel in the Perth Circuit Court who pleaded in mitigation of sentence the frequency of the crime, but all the response he obtained from Lord Cockburn was that he turned to his brother judge and said: "I don't know, my lord, what may be your opinion, but it appears to me that the learned counsel's statement ought to be regarded as the very opposite of a plea in mitigation, and seeing that the crime of bigamy is so common, instead of six months I think we ought to give eighteen."

Correspondence.

The Law Association.

Sir,—May we beg the courtesy of your columns to bring before the London solicitors who are readers of your Journal the remarks of our President, Lord Blanesburgh, reported in your issue of the 10th inst., and particularly in regard to his plea for a small special fund to be got together for the purpose of providing a country holiday for some of the young children whose mothers are being assisted by this Association.

A small fund has been collected each summer for this purpose for several years, but owing to the death of the principal subscriber to the fund we fear that this year there will be great difficulty in getting together a sum which will be sufficient to provide even a short holiday for all the children for whom it is required, while the general funds of the Association cannot undertake this additional call upon them in their reduced condition.

We feel sure that many of our profession, who are thinking of their own summer holidays, will be willing to spare a small donation to save these little children from being disappointed.

We shall be grateful for any donation, however small, which may be sent to the Secretary of the Association at 3, Gray's Inn-place, Gray's Inn, W.C.1.

DOUGLAS T. GARRETT, *Chairman*,
E. EVELYN BARRON, *Secretary*,
Law Association for the Benefit of Widows and Families of Solicitors in the Metropolis and Vicinity.

16th June.

Reviews.

The Old Bailey. By ALBERT CREW, of Gray's Inn and the Middle Temple, the Central Criminal Court and South Eastern Circuit, Barrister-at-Law. 1933. Demy 8vo. pp. xv and (with Index) 302. London: Ivor Nicholson and Watson, Ltd. 18s. net.

This book will chiefly appeal to readers who look for a wide range of information compressed into a comparatively small space. The more profoundly curious can go to the bibliography at the end for further and better particulars.

In so far as it deals with past history, this work has no novelties to offer in the way of curious discoveries. The nine famous trials selected from the last quarter of a century and running from Crippen to Hatry and Lord Kylsant are all fairly well remembered with the exception of *R.* v. *Lockett*, the great pearl robbery case in 1913. It would have been interesting to include by way of contrast some earlier cases illustrating the rougher methods of the Old Sessions House.

The main achievement of the book lies in its crystallisation of the work, the appearance, the legal status and the customs of the Central Criminal Court at the present day, a clear summary which will be of enduring value, and which in the immediate future should save many a novelist and producer from some perilous solecisms.

Ashburner's Principles of Equity. Second Edition. 1933. By Denis Browne, B.A., of Lincoln's Inn, Barrister-at-Law. Medium 8vo. pp. xlix and (with Index) 551. London: Butterworth & Co. (Publishers), Ltd. 32s. 6d. net.

The first edition of this book was published some thirty years ago. Since then, the present editor says, "it has attained the rank of a classic, fallen into obsolescence as time passed and it was not brought up to date, and at last achieved the melancholy dignity of a classic out of print and virtually unobtainable." The principal change in the new edition is the format, which now resembles that of "Halsbury's Laws of England." The book can be recommended confidently to advanced students, who will appreciate its clear arrangement and profit by the skill with which equitable principles are set out. Practitioners, also, should find it useful for—as Professor Ashburner observed—"The simpler a legal proposition is, the harder, as a rule, it is to find a precise authority upon it; and in this volume a great number of the elementary rules of equity are stated and supported by references." The scope of the work is determined by its object, which is to exhibit the influence equitable principles have had upon the various branches of English law. Thus, while trusts, married women's property, waste, administration of the assets of deceased persons are treated, the law of nuisance, ancient lights and riparian rights, which, though largely settled in the Chancery Division on applications for injunctions, has been determined solely by reference to common law rules, finds no place in the volume.

Frederick Edwin Earl of Birkenhead. The First Phase. By his Son, The Earl of Birkenhead. 1933. Demy 8vo. pp. (with Index) 319. London: Thornton Butterworth, Ltd. 21s. net.

It would perhaps be unfair to class this work simply as a biography in the new Marjoribanks tradition, since the comparison would seem to import a reproach in the observation that it has not quite the same brilliant unity of execution. This is not, however, the impression desired to be conveyed, for though the "sparkles of golden splendour" may not shine so brightly on the surface, the mineral wealth beneath is at the least not less.

Moreover, this book has the peculiarly attractive quality of being inspired, not by admiration merely, but of constituting a son's personal memorial to a father whose career has hardly been equalled in the history of his profession.

This first volume carries him to the zenith and the close of his career at the Bar and leaves him on the threshold of the Great War, with his thickest honours and highest achievements foreshadowed and close upon him.

Books Received.

The Income Tax Reports. Parts I, II and III. 1933. A Journal of the Law of Income Tax, with Reports of Cases decided by the Privy Council and the High Courts of India, and select English Cases, Acts, Rules, Notifications, etc. Lahore: The Company Law Institute of India. London: Sweet & Maxwell, Ltd. Annual subscription £1 1s. net.

Laws of Palestine, 1926-1931. Vol. IV. Edited by Moses Doukhan, O.B.E., Advocate, Member Palestine Bar. 1933. Palestine: L. M. Rotenberg. London: Stevens and Sons, Ltd. £1 10s. net.

The Micrometer for Finance. 1933. London: Bowman and Sansom, 1, Adelaide-street, W.C.2. 1s. net.

In Ancient Egypt and Present-day Germany. A Passover Sermon. By the Chief Rabbi (Dr. J. H. Hertz). 1933. London: Office of the Chief Rabbi.

Annual Survey of English Law, 1932. Medium 8vo. pp. lv and (with Index) 401. London: Sweet & Maxwell, Ltd. 10s. 6d. net.

Obituary.

Sir ALEXANDER WOOD RENTON.

Sir Alexander Wood Renton, G.C.M.G., K.C., died at his home in London last Saturday, within a week of his seventy-second birthday. He was educated at Glasgow Academy and Edinburgh, where he took first-class honours in the LL.B., and was a prizeman. He entered Gray's Inn in 1882, where he was Bacon scholar and was called to the Bar by that Inn in 1885, when he joined the Oxford Circuit. In 1901 he was appointed Procureur and Advocate-General to Mauritius in 1901, and later a Puisne Judge of the Supreme Court there. He was appointed to the Bench of the Supreme Court of Ceylon in 1905, and became Chief Justice in 1914, and was knighted the following year. He retired in 1918, and was immediately sent on a special mission to Nigeria and the Gold Coast Colony for the Colonial Office. In 1919 he went to Egypt for the Foreign Office, where he was Vice-President of the Egyptian Riots Indemnities Commission. He was Chairman of the Ceylon Salaries Commission in 1921, of the Irish Compensation Commission in 1923, and in 1926 became Chairman of the Irish Grants Committee. In 1917 Sir Alexander was created a Bencher of his Inn and in 1923 he took silk. He served as Treasurer of his Inn in 1925, in which year he was made a K.C.M.G., and in 1930 was created a Knight Grand Cross of that Order. His publications included the "Law and Practice of Lunacy" (1895), various legal articles in the "Encyclopædia Britannica" and contributions to the principal legal journals, one of which, the "Law Journal," was edited by him for a period. He was up to the time of his death Editor-in-chief of "Mew's Digest of English Case Law," and had frequently contributed to this journal on Colonial and International Law questions.

Mr. A. BRETT.

Mr. Alfred Brett, M.A., solicitor, of Wetherby and Harrogate, died at Harrogate on Friday, 16th June, at the age of sixty. Mr. Brett, who was educated at Repton and Oxford, was articled to a firm of Manchester solicitors in which his late father, at one time Town Clerk of Salford, was a partner. He was admitted a solicitor in 1907, and a few years later he entered into partnership with Mr. E. H. Coates of Wetherby. He took over the practice when Mr. Coates retired shortly before the war.

Mr. G. F. FLEMING.

Mr. George F. Fleming, solicitor, of Arklow, died at a Dublin hospital after a short illness on Monday, 5th June. He was admitted a solicitor in 1889. He practised in Derry and later at Enniscorthy, moving to Arklow at the beginning of the century.

Captain R. SCOTT FREEMAN.

Captain Robert Scott Freeman, solicitor, of Staines, Middlesex, died on Saturday, 17th June, as the result of a motor accident. Captain Scott Freeman, who was twenty-nine years of age, was admitted a solicitor in November, 1932.

Mr. C. E. VICKERS.

Mr. Charles Edmond Vickers, retired solicitor, of Sheffield, died at his home at Sheffield on Friday, 16th June, at the age of eighty-five. Mr. Vickers, who was admitted a solicitor in 1870, was for many years a partner in the firm of Messrs. Henry Vickers, Son & Brown, of Sheffield, of which his son, Mr. H. R. Vickers, is senior partner at the present time. Mr. Vickers held many important offices in the City of Sheffield, including those of Clerk to the City Magistrates and Law Clerk to the Town Trustees. He was for many years a member of the Sheffield Board of Directors of the Alliance Assurance Company.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Sale of Disinfectant in Mineral Water Bottles.

Q. 2759. A is a mineral water manufacturer and sells his mineral waters in specially made bottles which have his name impressed in the glass. The retailers charge their customers 1d. each for the bottles, which is repaid on the return thereof. B obtains possession of some of A's bottles and fills them with a disinfectant which he manufactures. He then places a label bearing his own name on the bottles and offers them for sale. Has A any remedy ?

A. The effect of the sales by A apparently is that, not only the mineral water, but the bottles also, become the property of the retailers. On the sales by the retailers the bottles then become the property of the buyers. The latter may be able to re-sell the bottles to the retailer (if the latter cares to buy the bottles back), but neither A nor the retailer is entitled to prevent the ultimate buyer from disposing of the bottle as he thinks fit. B may therefore have bought the bottles (or collected them from a rubbish heap) and no right of property of A is violated. This appears from the decision of the House of Lords in *William Leitch and Co. Ltd.* v. *Leydon* [1930] W.N. 247, where the person in the position of B (in the present case) merely filled embossed bottles brought to the shop by the public. The present case is somewhat stronger against B, who does more than merely fill his customers' bottles, as he is the man who supplies them with the bottles. Nevertheless, assuming (as in the last-named case) that A still owns the bottles—which is very doubtful—he would have no claim against B, in the absence of any contractual relationship. There remains the question whether B is applying a false trade description, under the Merchandise Marks Act, 1887—in spite of his placing his own labels upon the bottles. This method of business was held to be an offence in *Stone* v. *Burn* [1911] 1 K.B. 927. It is true that in that case both parties sold the same product, viz., beer, whereas in the present case B sells an entirely different product from A, viz., disinfectant. It appears, however, from the judgment of Lord Alverstone, L.C.J., at p. 931, that this fact (that no one would think he was buying the products of A) is not a good defence for B. The point (as to different products) is not covered by authority, but the opinion is given that A's remedy is to summon B for a breach of the last-named Act.

Copyright in Pamphlet.

Q. 2760. Clients of ours have published and distributed a leaflet advertising certain wire sack ties manufactured by them. The leaflet contains illustrations showing the operation of these articles. These illustrations consist of small sections showing the hands of a person tying a sack, the top of the sack which is being tied and the tie itself being manipulated. It appears that these illustrations have been copied direct from a pamphlet published by the C company, who also manufacture wire sack ties, though the letterpress is quite different. The C company allege that the illustrations are obvious copies of essential portions of illustrations made and used by them in their pamphlet and that they claim the copyright in these illustrations and they call upon our clients to discontinue the making, using or issuing of any copies thereof under threat of legal proceedings. Can the C company claim such copyright and compel our clients to accede to their demand ? If so, is any registration necessary before the C company can take any proceedings for infringement ? The reported decisions seem somewhat conflicting, particularly : *Cobbett* v. *Woodward* (1872), L.R. 14, Eq. 407 ; 41 L.J. Ch. 656 ; 27 L.T. 260 and *Maple & Co.* v. *Junior Army & Navy Stores* (1882), 21 Ch. D. 369 ; 52 L.J., Ch. 67 ; 47 L.T. 589.

A. The C company can claim copyright in their illustrations and can compel the questioner's clients to accede to their demand. In *Maple & Co.* v. *Junior Army & Navy Stores* (quoted in the question) doubts were expressed as to the soundness of *Cobbett* v. *Woodward* (also quoted) and the reporters of the three series (viz., L.R., L.J. and L.T.) were satisfied that *Cobbett* v. *Woodward* was actually overruled. See the headnotes to *Maple* v. *Junior Army & Navy Stores, supra.* The C company can take proceedings for infringement without registration, as the requirement of registration at Stationers' Hall was abolished by the Copyright Act, 1911.

Sale by Personal Representative of Property settled by the Will of a Testator dying in 1924—Implied pre-1926 Assent—Title.

Q. 2761. A testator who died in 1924 gave his freehold house to his executor and trustee (a trust corporation) in trust to allow his wife to occupy the same for her life so long as she should remain his widow, and after her death the said house should form part of his residuary estate. The widow continued in occupation of the house until her death in 1932 intestate, and letters of administration were taken out by her daughters. In the course of realising and distributing the residuary estate of the testator the trust corporation as personal representative conveyed the house to a purchaser, and in the conveyance there is a recital to the effect that they had not made any assent or conveyance of the premises. It is now suggested that the purchaser has not a good title. In the light of the answers to cases 5 and 6, pp. 418 and 419, "Every day Points in Practice," the vendor contends that the trust corporation was entitled to sell and that the purchaser has obtained a good title. Is the vendor's view a correct one, or is it advisable for the purchaser to call for a confirmatory document, and, if so, what ?

A. We have referred to the "cases" in "Everyday Points in Practice" mentioned by our subscribers, and in view of the opinions there expressed (with which the writer is in agreement) the contention of the vendor that the purchaser obtained a good title seems justified. If our subscribers feel any uneasiness as to the title, and the opinions given in "Everyday Points in Practice" are admittedly open to some question, it would be advisable to obtain a deed of confirmation (if possible). On the assumptions that there *was* an implied assent prior to 1926, and that with the death of the widow a trust for sale arises, the legal estate vested in the widow on 1st January, 1926 (L.P.A., 1925, Sched. I, Pt. II, paras. 3 and 6 (*c*)), and (the "settlement" having terminated with the death of the widow) is now in her administratrix. We suggest that this administratrix should at the request of the trust corporation and the purchaser assure to the latter such legal estate as is vested in her.

Guardian of an Infant—Whether a Corporation can act as.

Q. 2762. We act for a bank which is a trust corporation and which acts as executor and trustee in the manner now common with banks. The bank has recently been asked to

act as the guardian of certain infants, and it does not seem very clear whether it has power to do so. It is possible that from the strict wording of the Guardianship of Infants Act, 1925, it may be gathered that such a power exists; but on general principles it seems to us that a trust corporation is scarcely a suitable guardian for an infant child. Will you kindly let us have your views?

A. We agree that on general principles a corporate body is eminently unsuitable to fill the office of guardian. The writer has always been under the impression that none of the joint stock banks or other trust corporations would even consider the acceptance of such an office, but is unable to trace any authority for the proposition that a corporate body cannot be so appointed.

Land Tax—When Deductible by Tenant.

Q. 2763. A client of mine, who is a tenant farmer, is assessed in respect of land tax. Is he entitled to deduct this from his next payment of rent:—

(*a*) If there is nothing to the contrary specified in his tenancy agreement?

(*b*) If the tenancy agreement requires him to pay "all taxes, charges, and assessments"?

There appears to be no statutory prohibition to prevent a landlord compelling a tenant to pay this tax.

A. The Land Tax Act, 1797, authorises a tenant to deduct the landlord's share of the tax paid from his rent (s. 17). If the premises are let at a rack rent the landlord's share is the whole tax. The right of deduction is, however, subject to any covenant or agreement to the contrary (s. 35). A covenant to pay all taxes includes land tax (*Amfield* v. *White* (1825), Ry. & M. 246).

Verger—Claim to Compensation.

Q. 2764. In 1910 A was appointed verger of the parish church of X, the agreement being verbal, no special terms of arrangement beyond a stipend of so much a year, the duties being the usual duties of a verger in the church and the care of the churchyard. The churchyard is now being taken over by a burial board, and the verger will accordingly lose that portion of his duties, and will be invited to retain the duties in the church office at half the present stipend. Is he entitled to any, and if so, what, compensation for loss of office?

A. The verger of a parish church is an "ecclesiastical officer," and his position in this matter of compensation appears to depend upon s. 32 of the Burial Act, 1852, taken in conjunction with s. 3 (5) of the Burial Act, 1900. Whether this particular individual would in any case be entitled to compensation depends, we think, to some extent upon the precise nature of the duties he has performed in the past; but it is doubtful whether, having regard to the fact that his appointment only dates from 1910, he can succeed in any claim. See Little, "Law of Burials," notes to sections cited above.

Ecclesiastical Land—Lease for Building—Powers of Ecclesiastical Commissioners.

Q. 2765. In a lease purported to be made in exercise of the powers of the Ecclesiastical Leasing Acts the Ecclesiastical Commissioners authorise the lease of land for building purposes for the term of 200 years. What authority is required to enable the Commissioners to authorise the grant of a building lease for a term exceeding ninety-nine years?

A. By s. 1 of the Ecclesiastical Leasing Act, 1842, power is given to ecclesiastical corporations to grant leases for ninety-nine years; but by s. 1 of the Statute of 1858 lands authorised to be leased by the earlier Act by an ecclesiastical corporation may, with the approval of the Commissioners, be leased *for such term or terms*, etc., as the Commissioners may think proper and advisable. See note on leases of church lands, p. 408, "Encyclopædia of Forms and Precedents" (2nd ed.) as to special form required by the Commissioners.

Notes of Cases.

Judicial Committee of the Privy Council.

***In re* Union of Benefices of Bolton-le-Moors, St. Paul, Bolton-le-Moors, Christ Church, Bolton-le-Moors, Emmanuel, Lancashire.**

Lord Blanesburgh, Sir Lancelot Sanderson, and Sir George Lowndes. 30th May.

Benefices — Union — Demolition Scheme — View of Inquiry—Commissioners—Scheme Sanctioned.

This was an appeal by the members of the Parochial Church Council of Christ Church, Bolton, against a scheme framed by the Ecclesiastical Commissioners under the Union of Benefices Measure, 1923, for the division of the Parish of Christ Church, in Bolton, between the two adjoining Parishes of St. Paul and Emmanuel, for the supersession of Christ Church as a separate parish, and for the demolition of Christ Church and the sale of the site.

Lord Blanesburgh, giving the judgment of the Board, and after referring to the facts, said that their lordships felt that the spiritual needs of a parish of such small extent as Christ Church should be amply and effectively met by its incorporation in the two adjoining parishes. Their lordships, however, before expressing any final conclusion on the scheme, must refer to and dispose of a question which arose on a passage in the report of the Inquiry Commissioners to the Bishop: "There was some difference of opinion," they said, "between the Commissioners on the main question. It was recognised by all that if the needs of outlying parts of Bolton were *not* to be taken into account it would be difficult to justify any interference with Christ Church. The Commissioners, however, were in favour of recommending the proposed unions." That statement, continued Lord Blanesburgh, must be read in connection with the Measure, the effect of which, on this subject, was expounded by Lord Tomlin in *In re The Benefices of Great Massingham and Little Massingham* [1931] A.C. 328, where he pointed out that there was no statement in the Measure of the principles which were to govern the union of benefices except in the provision in s. 2 (6) to the effect that the Commissioners appointed to inquire and report should have full regard to the circumstances and interests of the parishes affected by their inquiry, and that it should be their duty to consider the matter under inquiry "in their relation to such circumstances and interests and to the interests of religion in England generally," and Lord Tomlin added that where a union of benefices was proposed the question of the diversion of surplus revenue seemed under s. 15 of the Measure to be for the consideration of the Ecclesiastical Commissioners, not as one of the factors for determining whether there should be union, but as a point for examination after a conclusion in favour of union had been reached. The question in the present case, therefore, became important, said Lord Blanesburgh, whether that avowal by the Commissioners that apart from their recommended diversion of surplus revenue—a matter beyond their cognizance—they would have found it difficult to justify any interference with Christ Church, should not have effect given to it. Having once reached that conclusion, were not the Commissioners in duty bound, if properly advised, to report against the scheme? Must not their lordships support a conclusion of the Commissioners which, if expressed as it should have been, would have been decisive against the scheme? After full consideration their lordships were satisfied that they were not required to make to His Majesty a report which on the scheme as a whole would accord neither with their own views nor with those of the majority of the Commissioners. The scheme would be affirmed, and the appeal against it dismissed.

Counsel: *J. W. Stansfield* for the appellants; *F. H. L. Errington* for the Ecclesiastical Commissioners, the respondents.

Solicitors: *Russell & Russell*, Bolton; *Milles, Jennings White & Foster*.

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

Court of Appeal.

Cullen *v.* Cullen and Methuen.

Lord Hanworth, M.R., Lawrence and Romer, L.JJ.

30th May.

DIVORCE—PRACTICE—PETITIONER'S ADMISSION OF HIS OWN MISCONDUCT—DISCLOSURE TO COURT—ORDER THAT CONFESSION BE LODGED IN COURT IN SEALED ENVELOPE—DISCRETION.

Appeal from a decision of Bateson, J., on an interlocutory application.

A husband petitioned for divorce on the ground of his wife's alleged adultery, which she and the co-respondent denied. The petitioner admitted that he had himself committed adultery, and asked for the court's discretion in his favour. Bateson, J., allowed him to give particulars of his misconduct in a sealed envelope, to be lodged in court, and directed that the envelope might be opened by the Registrar, for the purpose of giving his certificate, but should be re-sealed by him, and that the particulars should not be disclosed to the wife. The wife appealed. She contended that although Bateson, J.'s order was based on a similar order made by the President in a case referred to in THE SOLICITORS' JOURNAL of 24th December, 1932, yet there could be no valid precedent for a procedure in which there was to be a secret communication to the court, in a matter affecting the court's judgment, against the interests of one of the parties. The court dismissed the appeal.

Lord HANWORTH, M.R., said that neither in the present case, nor in that referred to in THE SOLICITORS' JOURNAL was there any suggestion that the course adopted was in any way a precedent, or in any way an indication of the practice to be followed in other cases. Both Bateson, J., and the President were dealing with the particular facts of particular cases. It was a case of the judge's discretion, and that discretion ought not lightly to be interfered with by the Court of Appeal. Having reviewed the authorities which dealt with the discretion given to the judges of the divorce division, his lordship, continuing, said that there was nothing in the procedure governing divorce practice to show that it was ever intended that revelation by a petitioner of his own adultery should give greater rights to the other party or parties to the suit. It was a matter purely between the petitioner and the court. It was a part of the court's discretion that it should be able, without having its hands tied by any specific rules, to say that in a proper case a confession lodged in court might be sealed up. There was no ground for saying that that particular form of discretion was beyond the powers of the court. It had not been shown that the court had failed to exercise its discretion; still less that it had exercised it wrongly.

COUNSEL: *Serjeant Sullivan*, K.C., and *Geoffrey Tyndale*, for the appellant (the wife); *W. N. Stable*, for the respondent (the husband).

SOLICITORS: for the appellant, *Samuel Coleman*; for the respondent, *Theodore Goddard & Co.*

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Gillott's Settlement: Chattock *v.* Reid.

Maugham, J. 17th May.

SETTLEMENT—POWER OF APPOINTMENT—PROTECTED LIFE INTEREST—LOANS—COVENANT BY APPOINTEE TO PAY INCOME TO THIRD PARTY WITHIN THREE DAYS OF RECEIPT—FORFEITURE.

The settlement, made on the first marriage of Ethel Leonora Gillott, and dated the 15th August, 1892, gave her a life interest in the settled land, and her husband, if he should survive her, a protected life interest, making the annual income payable to him, provided he should not "have been or become bankrupt and should not have assigned, charged or incumbered, or attempted or affected to assign, charge or incumber the annual produce of the trust premises or any part thereof or have done or suffered anything whereby the same or any part thereof would, through his act or default or by operation or process of law or otherwise, if belonging absolutely to him, have become vested in or payable to some other person or persons," or until one of these events should happen. It also gave her power, if she survived her husband, to appoint the annual income to be paid after her death to any husband she might marry and who might survive her, on like terms and subject to the same restrictions. Her first husband having died, she married, in 1906, The Rev. James Campbell. In 1908, the husband and wife had borrowed £3,016 to enable them to pay their debts, and, by a memorandum of agreement, it was provided that: "as long as any money shall remain owing under these presents each of them, the husband and the wife, shall, within three days after the receipt of any money in the nature of income, pay one equal half part of such money" into the account of a named depositee to be applied for the benefit of their creditors. In 1927 a further sum was advanced, and a further agreement entered into, whereby the husband and wife agreed that "so long as any money now owing by the husband and wife as aforesaid shall remain owing, the husband and wife shall within three days after the receipt of any money in the nature of income pay the whole of such income" into an account in the name of a depositee who would employ it in paying costs, premiums on policies, etc., in making an allowance to the husband and wife and in paying the debts. In 1929 the wife made a will appointing the husband a life interest in the trust premises in terms substantially similar to those of the settlement. She died in 1932.

MAUGHAM, J., in giving judgment, said that the question was whether the income of the settled funds could be paid to the husband notwithstanding the agreements of 1908 and 1927. In *In re Lind* [1915] 2 Ch. 345, Swinfen Eady, L.J., said that "an assignment for value of future property actually binds the property itself directly it is acquired—automatically on the happening of the event and without any further act on the part of the assignor—and does not merely rest in and amount to a right in contract giving rise to an action." The assignor becomes in equity a trustee. In the present case, the husband was, in effect, in this position. It made no difference that he was obliged to pay the money within three days of its receipt. The effect would have been the same if the word "forthwith" had been used. During those three days the property was not the absolute interest of the husband. *Palmer* v. *Carey* [1926] A.C. 703, an Australian appeal, is shown by reference to 34 Commonwealth L.R. 380, not to affect the correctness of the decision in *In re Lind*, *supra*. Finally, though, ordinarily speaking, a document should not operate as an equitable assignment unless the parties so intend, and here the parties wished to avoid any equitable assignment, the language used made the husband a trustee of the income and he was bound to hand it over. Accordingly, his interest was forfeited.

COUNSEL: *R. H. Hodge*; *W. E. Vernon*; *R. F. Roxburgh*, K.C., and *J. H. Boraston*; *J. Neville Gray*; *F. R. Evershed*, K.C., and *A. Andrewes Uthwatt*; *H. S. G. Buckmaster*.

SOLICITORS: *Bird & Bird*, for *Sydney Mitchell, Chattock and Hatton*, of Birmingham.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

CHILDREN AND YOUNG PERSONS ACT, 1933.

A table of comparison showing how the enactments consolidated are dealt with by the Children and Young Persons Act, 1933, is now on sale (price 2d.) and may be obtained either directly from H.M. Stationery Office, Adastral House, Kingsway, W.C.2, or through any bookseller.

In re Broad Street Press, Ltd.

Eve, J. 13th June.

APPLICATION FOR RETURN OF DEPOSITED SECURITIES—DEATH OF APPLICANT—SUMMONS BY EXECUTORS.

This matter originally came before the court on a summons by David O'Leary Hannigan asking for the return of certain securities which he had entrusted to Broad Street Press, Ltd., for sale and to re-invest the proceeds in Rhodesia Border Mining Corporation, Ltd., a company the shares in which were stated to be worthless. On a winding up of the Broad Street Press, Ltd., an order was made vesting all the securities in its possession in the Official Receiver. Eve, J., made an order on the summons in favour of the applicant, but a few days later it was discovered that the applicant had died on 20th February before the hearing, and therefore the judgment was of no avail. An order was afterwards made in favour of the present applicants, the surviving executors of the late David O'Leary Hannigan, to carry on the proceedings, and they now applied for a similar order to that made in favour of David O'Leary Hannigan.

EVE, J., said it appeared that the late applicant entrusted a number of his securities to Broad Street Press, Ltd., for sale and re-investment, but when the time came to implement those contracts he neglected to deliver some of the stock certificates. It was clear that in that state of things he could recover the assets that remained. The Official Receiver ought to do what was necessary to re-transfer the securities, and there were other moneys in his hands. On the evidence the shares of Rhodesia Border Mining Corporation, Ltd., were of no value. On the facts the late David O'Leary Hannigan was entitled to damages against some persons who could not be found and also to have his contracts for the purchase of shares set aside. Unfortunately it turned out after the matter had been decided that Mr. Hannigan was dead at the date of the hearing. The matter having now been restored, the applicants were entitled to the same relief. It was said that the present case would govern a number of others. There would be the usual order for costs of the late applicant and of his representatives to be paid by the liquidator out of the assets of Broad Street Press, Ltd.

COUNSEL: *Andrewes-Uthwatt; Harold Christie.*

SOLICITORS: *Farrer & Co.; Wordsworth, Marr Johnson and Shaw.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Burr and Others *v.* Anglo-French Banking Corporation, Limited.

Swift, J. 3rd April.

JUDGMENT—ACTION TO DECLARE NULL AND VOID—DEFENDANT NON-EXISTENT—ACTION MAINTAINABLE.

The plaintiffs in this action were three members of the Liquidation Commission appointed to take over the assets lately belonging to a Chilean company called the Compania de Salitre de Chile. They claimed a declaration that a judgment given by Mr. Justice Lawrence on 19th January, 1933, in favour of the present defendants, the Anglo-French Banking Corporation, Ltd., who were the plaintiffs in two consolidated actions against the Compania de Salitre de Chile, was null and void and of no effect. The present plaintiffs further claimed an injunction restraining the Anglo-French Banking Corporation, Ltd., their agents or servants, from enforcing or taking any steps to enforce the judgment in any way whatsoever. The existence of the Compania de Salitre de Chile was authorised by a decree of the Chilean Government dated the 20th March, 1931, and was further declared to be legally installed by a decree of the 22nd April, 1931: but by a Presidential Decree of the 2nd January, 1933—seventeen days before the judgment sought to be set aside was given—it was ordered that the two decrees of March and April, 1931, be repealed and left without effect. In the present case the defendant corporation pleaded that the action was not maintainable.

SWIFT, J., said that the first question was whether the action would lie at all. When it was sought to enforce the judgment of Mr. Justice Lawrence objection was taken by the present plaintiffs, who said that the then defendant company, the Compania de Salitre de Chile, never in law existed and could not now be sued. He (his lordship) thought that the present action would lie. It was clear on the authorities that where there was an allegation that a judgment had been obtained by fraud the courts would stay any further proceedings under that judgment. He referred to *Charles Bright & Co.* v. *Sellar* [1904] 1 K.B. 6, and to *Lazard Brothers & Co., Ltd.* v. *The Midland Bank, Ltd.*, 49 T.L.R. 94, and said that in addition to fraud as being a ground for such an action as the present, the fact that those bringing the action were able to satisfy the court that the person who was sued was indeed a non-existent person at the time judgment was given was also a ground for bringing such an action as the present. In his view, therefore, the action was maintainable. After considering the three decrees in question his lordship said that he thought that the Compania de Salitre de Chile never did come into legal existence owing to the effect of the Presidential Decree. The plaintiffs were entitled to have the declaration and injunction they asked for, with costs.

COUNSEL: *Stuart Bevan*, K.C., and *Wilfrid Lewis*, for the plaintiffs; *Harold L. Murphy*, for the defendants.

SOLICITORS: *Slaughter & May; Stephenson, Harwood and Tatham.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Chancery of Lancashire.

In re Allan: Roberts *v.* Robinson and Others.

Vice-Chancellor Sir Courthope Wilson. 10th April.

WILL—CONSTRUCTION—GIFT OF "ALL MONEY BELONGING TO ME"—ABSENCE OF CONTEXT—WHAT ASSETS INCLUDED.

This was a petition to determine (*inter alia*) what was included in a testamentary disposition of "all money belonging to me."

By her will dated the 23rd July, 1931, the testatrix, after appointing as executors her nephew (who did not prove) and the petitioner, and making a series of specific bequests of her jewellery and household effects, concluded "All money belonging to me to be divided equally between my four stepchildren" and named them.

The testatrix died on the 29th September, 1932, and her estate consisted of (1) the jewellery and effects mentioned in the specific bequests, (2) an item of jewellery (value one guinea), (3) £302 12s. 7d. 5 per cent. War Stock, (4) some shares in two companies, (5) £128 13s. 6d., being income payable to her as tenant for life under her late husband's will, (6) £98 4s. 8d., being similarly derived income accrued but not yet payable, (7) cash on drawing account at bank, and (8) a promissory note for £250 and interest.

This petition was presented by the proving executor asking whether the expression "all money belonging to me" included the whole residuary personalty, or whether the word "money" was to be strictly construed, and, if so, which of the above items were included in the bequest.

The following cases were referred to: *Beales* v. *Crisford*, 13 Sim. 592; *Byram* v. *Brandreth*, 16 Eq. 475; *In re Cadogan*, 25 C.D. 154; *In re Taylor* [1923] 1 Ch. 99.

The VICE-CHANCELLOR (Sir Courthope Wilson, K.C.) said that the word "money" must be strictly construed, unless there was something in the context to show that it was intended to bear a wider meaning, and that in the present case there was no context to enlarge the meaning of the

word, and he accordingly held that the only items included in the bequest of "all money belonging to me" were those numbered (5) and (7) above, and that there was an intestacy as to the remainder so far as not specifically bequeathed.

COUNSEL: *J. Bennett*, for the petitioner; *A. Walmesley*, for the legatees; *R. A. Forrester*, for the next-of-kin.

SOLICITORS: *Samuel Bishop & Sons*, Manchester.

[Reported by A. H. MONTGOMERY, Esq., Barrister-at-Law.]

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Parliamentary News.

Progress of Bills.

House of Lords.

Aberdeen Royal Infirmary and Mental Hospital Order Confirmation Bill.
Read Third Time. [20th June.

Adelphi Estate Bill.
Read Third Time. [20th June.

Administration of Justice (Miscellaneous Provisions) Bill.
Amendments reported. [20th June.

Jesus Hospital in Chipping Barnet Charity Bill.
Read Third Time. [21st June.

Kingston-upon-Hull Corporation Bill.
Read First Time. [15th June.

Leeds Corporation Tramways Provisional Order Bill.
Read Second Time. [20th June.

London and North Eastern Railway Order Confirmation Bill.
Read First Time. [15th June.

London County Council (General Powers) Bill.
Read Third Time. [20th June.

London Midland and Scottish Railway Bill.
Reported, with Amendments. [15th June.

London Midland and Scottish Railway Order Confirmation Bill.
Read First Time. [15th June.

Ministry of Health Provisional Order Confirmation (Chepping Wycombe) Bill.
In Committee. [21st June.

Ministry of Health Provisional Order Confirmation (Luton Water) Bill.
Reported, without Amendment. [21st June.

Ministry of Health Provisional Order Confirmation (Mid-Glamorgan Water Board) Bill.
In Committee. [21st June.

Ministry of Health Provisional Order Confirmation (Warwick) Bill.
Read Second Time. [21st June.

Ministry of Health Provisional Order Confirmation (Worthing) Bill.
Read Second Time. [21st June.

Ministry of Health Provisional Order Confirmation (Wrexham and East Denbighshire Water) Bill.
Reported, without Amendment. [21st June.

Ministry of Health Provisional Order (Sheffield) Bill.
Read Third Time. [21st June.

Ministry of Health Provisional Orders (Bath and Bury and District Joint Water Board) Bill.
In Committee. [21st June.

Ministry of Health Provisional Orders Confirmation (Maidstone and Stockton-on-Tees) Bill.
Reported, without Amendment. [21st June.

Norwich Corporation Bill.
Read Third Time. [15th June.

Plympton St. Mary Rural District Council Bill.
Read First Time. [20th June.

Private Legislation Procedure (Scotland) Bill.
Read First Time. [20th June.

Rent and Mortgage Interest Restrictions (Amendment) Bill.
In Committee. [20th June.

Salford Corporation Bill.
Reported, with Amendments. [20th June.

Sheffield Extension Bill.
Read Second Time. [20th June.

Summary Jurisdiction (Appeals) Bill.
In Committee. [15th June.

Victoria Infirmary of Glasgow Act, 1888 (Amendment) Order Confirmation Bill.
Read Third Time. [20th June.

House of Commons.

Adelphi Estate Bill.
Read First Time. [21st June.

Amersham, Beaconsfield and District Water Bill.
Read Third Time. [16th June.

Cancer Hospital (Free) Bill.
Read Second Time. [20th June.

Church of Scotland (Property and Endowments) Amendment Bill.
Read Second Time. [15th June.

Colne Corporation Bill.
Reported, with Amendments. [21st June.

Dearne District Traction Bill.
Read Second Time. [20th June.

Finance Bill.
In Committee. [20th June.

Government of India (Amendment) Bill.
Read Third Time. [19th June.
Juries (Amendment) Bill.
Read First Time. [20th June.
Kingston-upon-Hull Corporation Bill.
Read Third Time. [15th June.
London County Council (Money) Bill.
Reported, with Amendments. [20th June.
Manchester Corporation Bill (changed to "Manchester Royal Infirmary Bill").
Reported, with Amendments. [20th June.
Metropolitan Police Bill.
Reported, with Amendments. [20th June.
Ministry of Health Provisional Order (Street) Bill.
Read Second Time. [21st June.
Pharmacy and Poisons Bill.
Read Third Time. [15th June.
Pier and Harbour Provisional Orders (Elgin and Lossiemouth and Southwold) Bill.
Read Second Time. [16th June.
Plympton St. Mary Rural District Council Bill.
Read Third Time. [20th June.
Private Legislation Procedure (Scotland) Bill.
Read Third Time. [15th June.
Protection of Birds Bill.
Read First Time. [21st June.
Service of Process (Justices) Bill.
Read Second Time. [15th June.
Torquay and Paignton Tramways (Abandonment) Bill.
Read Second Time. [20th June.
Unemployment Insurance (Expiring Enactments) Bill.
Read Third Time. [21st June.

Rules and Orders.

THE RULES OF THE SUPREME COURT (No. 1), 1933.
DATED JUNE 2, 1933.

We, the Rule Committee of the Supreme Court, hereby make the following Rules :—

1. The following provisions shall be inserted in Rule 6 of Order III :—

(*a*) After the words "damages for its detention ; " the words :—" and (4) in all other actions in the King's Bench Division (except actions for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage, and actions in which fraud is alleged by the plaintiff)."

(*b*) After the words "special endorsed with," the words :—" or accompanied by."

(*c*) After the words "Appendix C., sec. IV," the words :—" to VII inclusive."

2. Paragraph (*a*) in Rule 1 of Order XIV shall be revoked and the following paragraph shall be substituted therefor :—

"(*a*) Where the defendant appears to a writ of summons specially indorsed with or accompanied by a statement of claim under Order III, Rule 6, the plaintiff may on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any liquidated sum is claimed), and stating that in his belief there is no defence to the action except as to the amount of damages claimed, if any, apply to a Judge for liberty to enter judgment for such remedy or relief as upon the statement of claim the plaintiff may be entitled to. The Judge thereupon, unless the defendant shall satisfy him that he has a good defence to the action on the merits or shall disclose such facts as may be deemed sufficient to entitle him to defend the action generally, may make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy or relief claimed."

3. The following Rule shall be inserted after Rule 7 of Order XIV and shall stand as Rule 7A :—

"7A. Where in the case of any claim for unliquidated damages the Court or a Judge has given leave to enter interlocutory judgment, a writ of inquiry shall issue to assess the value of the goods and the damages (or the damages only) to be awarded, provided that the Court or a Judge may order that instead of a writ of inquiry the value and amount of damages or either of them shall be ascertained in any way which the Court or Judge may direct."

4. The following paragraph shall be added at the end of Rule 8 of Order XIV, and shall stand as paragraph (*d*) :—

"(*d*) Where the plaintiff has obtained leave to enter final judgment subject to a suspension of execution pending the trial of a counterclaim, the provisions of this Rule shall apply to the counterclaim as if it were an action."

5. Rule 1 of Order XX shall be revoked and the following Rule shall be substituted therefor :—

"1. The delivery of statements of claim shall be regulated as follows :—

(*a*) Where the writ is specially indorsed with or accompanied by a statement of claim under Order III, Rule 6, no further statement of claim shall be delivered, unless the Court or a Judge shall otherwise order.

(*b*) Subject to the provisions of Order XIII, Rule 12 as to filing a statement of claim when there is no appearance, the plaintiff shall (unless he has delivered a statement of claim under Order III, Rule 6, or the Court or a Judge otherwise orders) deliver a statement of claim either with the writ of summons or notice in lieu of writ of summons, or at any time after appearance, provided that in no case where a defendant has appeared shall a statement of claim be delivered more than ten days after appearance, unless the time be extended by the Court or a Judge."

6. Rule 6 of Order XXI shall be revoked and the following paragraph shall be substituted therefor :—

"6. Where a defendant has entered an appearance, he shall deliver his defence within fourteen days from the time limited for appearance or from the delivery of the statement of claim, whichever shall be the later, unless such time is extended by the Court or a Judge, or, in actions in which the writ of summons has been specially indorsed with or accompanied by a statement of claim under Order III, Rule 6, the plaintiff in the meantime serves a summons for judgment under Order XIV."

7. Rule 8 of Order XXI shall be revoked.

8. Rules 1, 2, 3, 4, 5, 6, 7, 8, 8A, 9, 20 and 22 of Order XXII shall be revoked and the following Rules shall be substituted therefor :—

"ORDER XXII.

Payment into and out of Court.

1. *Payment into Court.*]—(1) In any action for a debt or damages or in an admiralty action the defendant may at any time upon notice to the plaintiff pay into court a sum of money in satisfaction of the claim or (where several causes of action are joined in one action) in satisfaction of one or more of the causes of action ; provided that with a defence setting up tender before action the sum of money alleged to have been tendered must be brought into court.

Specific causes of action.—(2) Where the money is paid into court in satisfaction of one or more of several causes of action the notice shall specify the cause or causes of action in respect of which payment is made and the sum paid in respect of each such cause of action, unless the Court or a Judge otherwise order.

Notice—(3) The notice shall be as in Form 3 in Appendix B, and shall state whether liability is admitted or denied, and receipt of the notice shall be acknowledged in writing by the plaintiff within three days.

2. *Plaintiff may take out money.*]—(1) Where money is paid into court under Rule 1, the plaintiff may, within seven days of the receipt of the notice of payment into court, accept the whole sum or any one or more of the specified sums in satisfaction of the claim or in satisfaction of the cause or causes of action to which the specified sum or sums relate, by giving notice to the defendant in Form 4 in Appendix B ; and thereupon he shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid.

(2) Payment shall be made to the plaintiff or on his written authority to his solicitor, and thereupon proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall be stayed.

Plaintiff may tax costs.]—(3) If the plaintiff accepts money paid into court in satisfaction of his claim, or if he accepts a sum or sums paid in respect of one or more of specified causes of action, and gives notice that he abandons the other cause or causes of action, he may, after four days from payment-out and unless the Court or a Judge otherwise order, tax his costs incurred to the time of payment into court, and forty-eight hours after taxation may sign judgment for his taxed costs.

(4) A plaintiff in an action for libel or slander who takes money out of court may apply for leave to make in open court a statement in terms approved by a Judge in Chambers.

(5) This rule does not apply to admiralty actions or to an action or cause of action to which a defence of tender before action is pleaded.

3. *Money remaining in Court.*]—If the whole of the money in court is not taken out under Rule 9, the money remaining in court shall not be paid out except in satisfaction of the claim or specified cause or causes of action

in respect of which it was paid in and in pursuance of an order of the Court or a Judge, which may be made at any time before, at or after trial.

4. *Several defendants.*]—(1) Money may be paid into court under Rule 1 by one or more of several defendants sued jointly or in the alternative, upon notice to the other defendant or defendants.

(2) If the plaintiff elects within seven days after receipt of notice of payment into court to accept the sum or sums paid into court, he shall give notice as in Form 4 in Appendix B to each defendant.

(3) Thereupon all further proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall be stayed, and the money shall not be paid out except in pursuance of an order of the Court or a Judge dealing with the whole costs of the action or cause or causes of action (as the case may be).

5. *Counterclaim.*]—A plaintiff or other person made defendant to a counterclaim may pay money into court in accordance with the foregoing Rules, with the necessary modifications.

6. *Non-disclosure of payment into Court.*]—Except in an action to which a defence of tender before action is pleaded or in which a plea under the Libel Acts, 1843 and 1845,* has been filed, no statement of the fact that money has been paid into court under the preceding Rules of this Order shall be inserted in the pleadings and no communication of that fact shall at the trial of any action be made to the Judge or Jury until all questions of liability and amount of debt or damages have been decided, but the Judge shall, in exercising his discretion as to costs, take into account both the fact that money has been paid into Court and the amount of such payment."

9. The following Rules of Order XXII shall be re-numbered in the manner shown.

Present number of Rule.	Future number of Rule.
10	7
11	8
12	9
12A	10
12B	11
13	12
14	13
15	14
15A	15
18A	19
19	20

10. Order XXIII shall be revoked and the following Order shall be substituted therefor :—

" ORDER XXIII.

Reply.

1. Where the Plaintiff desires to deliver a reply, he shall deliver it within seven days from the delivery of the defence.

2. Where a counterclaim is pleaded, a reply thereto shall be subject to the Rules applicable to defences."

11. Rule 13 of Order XXVII shall be revoked, and the following Rule shall be substituted therefor :—

" 13. Where a pleading subsequent to a reply is not ordered, then, at the expiration of seven days from the delivery of the defence or reply (if any), or, where a pleading subsequent to the reply is ordered, and the party who has been ordered or given leave to deliver the same fails to do so within the period limited for that purpose, then at the expiration of the period so limited, the pleadings shall be deemed to be closed and material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue ; provided that this Rule shall not apply to a reply to a counterclaim, and that, unless the plaintiff delivers a reply to a counterclaim, the statements of fact contained in such counterclaim shall, at the expiration of fourteen days from the delivery thereof, or of such time (if any) as may by order be allowed for delivery of a reply thereto, be deemed to be admitted, but the Court or a Judge may at any subsequent time give leave to the plaintiff to deliver a reply."

12. Rule 1 of Order XXX shall be amended as follows :—

(1) Paragraphs (*a*) and (*b*) shall be revoked and the following paragraph shall be substituted therefor :—

" (*a*) Within seven days from the time when the pleadings shall be deemed to be closed, the plaintiff shall take out a summons for directions returnable in not less than seven days."

(2) Paragraph (*c*) shall be lettered " (*b*)."

(3) In paragraph (*d*) the words " to actions in which the writ is specially indorsed under Order III, Rules 6 " shall be omitted, and the following words shall be substituted therefor :—

" to actions in which the plaintiff has applied for judgment under Order XIV and directions have been given, or to actions in which an application for transfer to the Commercial List is pending, or in which transfer to such List has been ordered."

(4) Paragraph (*d*) so amended shall be lettered " (*c*)."

13. In Rule 2 of Order XXX after the words " place and mode of trial " there shall be inserted the words " and the mode by which particular facts may be proved at the trial."

14. In Rule 7 of Order XXX after the words " on the hearing of the summons " there shall be inserted the words " or at the trial," and after the words " shall be given " there shall be inserted the words " at the trial."

15. In Rule 8 of Order XXX the words " within 14 days from the entry of the defendant's appearance " shall be omitted and the words " within seven days from the time when the pleadings shall be deemed to be closed " shall be substituted therefor.

16. The following Rule shall be inserted after Rule 1 of Order LIVA and shall stand as Rule 1A :—

" 1A. In any Division of the High Court any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of a statute, may apply by originating summons for the determination of such question of construction, and for a declaration as to the right claimed."

17. Rules 71-77 (both inclusive of Order LVB) and the title thereto, are hereby revoked and the following Rules and title shall stand in lieu thereof : —

" *Housing Act*, 1930.

Town and Country Planning Act, 1932.

71. An application under section eleven of the Housing Act, 1930,(†) or under paragraph two of Part II or paragraph two of Part III of the First Schedule to the Town and Country Planning Act, 1932,(‡) shall be made by an originating notice of motion to a Judge of the High Court selected for the purpose by the Lord Chancellor.

72. The evidence upon the hearing of the application shall be by affidavit except in so far as the Court at the hearing may direct oral evidence to be given.

73. The notice of motion shall state the grounds for the application, and the date mentioned in the notice for the hearing of the application shall be not less than fourteen days after the service of the notice.

74. The notice of motion shall, within the time limited by the said respective enactments for making the application, be entered at the Crown Office and be served on the Minister of Health and also :—

(i) if the application relates to a clearance order or a compulsory purchase order under the Housing Act, 1930, on the authority by whom the order was made, or

(ii) if the application relates to a scheme, supplementary order, or compulsory purchase order under the Town and Country Planning Act, 1932, on the authority by whom the scheme or supplementary order was prepared or adopted, or is deemed to have been prepared or adopted, or the compulsory purchase order was made.

75. The ordinary practice and Rules of the King's Bench Division shall apply so far as they are applicable, and are not inconsistent with the provisions of the Acts referred to in this Part of this Order, or of the Rules contained therein."

18. In Form 2 in Appendix A the word " ten " in the expression " a defence within ten days " shall be omitted and the word " fourteen " shall be substituted therefor.

19. The Forms No. 3 and No. 4 in Appendix B shall be revoked and the following Forms shall be substituted therefor—

" No. 3.

Notice of Payment into Court (O.22, r. 1).

In the High Court of Justice, (Letter and number)
Division.

Between A.B., Plaintiff
and
C.D. and E.F. Defendants.

Take notice that the defendant (C.D.) has paid into Court £ and says that (£ part of) that sum is enough to satisfy the plaintiff's claim (for and £ the other part of that sum is enough to satisfy the plaintiff's claim for) and admits (but denies) liability therefor.

Dated the day of , 19 .

.....P.Q.
Solicitor for the defendant C.D.

To Mr. X.Y., the plaintiff's solicitor.
(and to Mr. R.S., solicitor for the defendant, E.F.)

.....

* 6-7 V. c. 96 and 8-9 V. c. 75.

† 20-1 G. 5. c. 39. ‡ 22-3 G. 5 c. 48.

Received the above sum of pounds shillings and pence into Court in this action.
Dated the day of , 19 .

No. 4.

Acceptance of sum paid into Court (O.22, r. 2.).
(*Title as in Form* 3.)

Take notice that the plaintiff accepts the sum of £ paid by the defendant (C.D.) into Court in satisfaction of the claim in respect of which it was paid in (and abandons his other claims in this action).

X.Y., plaintiff's Solicitor.

To Mr. P.Q. Solicitor for the Defendant C.D.
and Mr. R.S., Solicitor for the defendant E.F."

20.—(1) These Rules may be cited as the Rules of the Supreme Court (No. 1) 1933, and the Rules of the Supreme Court, 1883,§ shall have effect as amended by these Rules.

(2) These Rules shall apply to all actions commenced on or after the 1st day of July, 1933, and subject as aforesaid, shall come into operation on the 1st day of August, 1933.

Dated the 2nd day of June, 1933.

Sankey, C.	*Swift*, J.
Hewart, C.J.	*Maugham*, J.
Hanworth, M.R.	*D. B. Somervell.*
Merrivale, P.	*C. H. Morton.*
P. Ogden Lawrence, L.J.	*Roger Gregory.*

§ S.R. & O. Rev. 1904, XII, Supreme Court, E., pp. 54–417 (reprinted as amended to Dec. 31, 1903).

The Law Society.

ANNUAL GENERAL MEETING.

The Annual General Meeting of the members of this Society will be held at the Society's Hall (Chancery-lane entrance), on Friday, the 7th July, at 2 p.m.

The following are the provisions of Bye-law 15 as to the business to be transacted at an Annual General Meeting, namely :—" The business of an Annual General Meeting shall be the election of President, Vice-President, and Members of Council, as directed by the Charter, and also the election of Auditors ; the reception of the accounts submitted by the Auditors for approval, the reception of the Annual Report of the Council, and the disposal of business introduced by the Council, and of any other matter which may consistently with the Charter and bye-laws be introduced at such meeting." The following candidates have been nominated to fill the twelve vacancies in the Council, and in the offices of President, Vice-President, and Auditors :—Qualified Members of the Society nominated as members of the Council to be elected at the Annual General Meeting on the 7th July—*Ernest Edward Bird, *Thomas Hume Bischoff, M.A., *Frederick Henry Ewart Branson, B.A., LL.B., Edward Leslie Burgin, LL.D., M.P., †William Arthur Coleman, Owen Johnston Humbert, *Arthur Croke Morgan, M.A., *†Sir Charles Henry Morton, †William Rutley Mowll, *Sir Harry Goring Pritchard, Thomas William Wood Roberts, J.P., *†Herbert Harger Scott, LL.B., *Harold Nevil Smart, C.M.G., O.B.E., *Francis Edward James Smith, M.A. Qualified members proposed as President and Vice-President—As President, Sir Reginald Ward Edward Lane Poole, B.A. ; as Vice-President, Harry Rowsell Blaker. Qualified persons proposed as Auditors of the Society—John Stephens Chappelow, F.C.A., Edward William Forward, and Everard Stearns Bristowe.

Costs of Leases.

The following resolution was passed at the Special General Meeting of the Society on the 27th January, 1933 :—" That the Council be requested to take early action with regard to the incidence of the costs of a lease, so that instead of both lessor's and lessee's costs of a lease falling on the lessee in accordance with the present practice and custom, each party shall bear their own costs." The Council do not adopt the resolution. It is their duty, therefore, to bring it before this meeting, pursuant to Bye-law 34.

ANNUAL REPORT.

The Annual Report of the Council of The Law Society, to be presented to the General Meeting of the members on 7th July, announces the vacancies on the Council, particulars of which, together with the nominations, are set out in the foregoing announcement. Mr. W. H. Foster and Dr. A. H. Coley have resigned owing to ill-health, and Mr. Samuel Saw, who retires by rotation, has decided after twelve years' service on the Council, not to seek re-election.

* Retiring members of the Council.
† Provincial Law Societies' Nominees.

After recording various honours and appointments, the report goes on to deal with various matters and events of the past year, some of the more important of which are as follows :—

Membership of the Society.

The Society has now 10,505 members, of whom 4,243 practise in town and 6,262 in the country. Five hundred and sixty-six new members joined the Society during the past year, an increase of some 169 over the previous year. After allowing for deaths, resignations and exclusions, the number of members shows an increase for the year of 169. The present membership is once again the highest in the Society's history, being approximately two-thirds of the total number of practising solicitors. The Council venture to urge all members to do what they can towards persuading non-members to join the Society. By this means it will be assisting in its work of protecting and advancing the interests of the profession.

Legal Education.

The number of articled clerk students attending law schools (excluding the Universities of Oxford, Cambridge and London) in the Autumn Term, 1932, was 1,085, an increase of sixteen compared with the corresponding figures for the previous Autumn Term.

A change of importance to articled clerks in the Oxford area has been made. Students are now admitted to lectures in the University of Oxford without the requirement of passing Responsions. Mr. P. A. Landon, of Trinity College, and one of the Society's Lecturers, has been appointed by the Council to act as supervisor of articled clerk students.

Departmental Committee on Legal Education.

In August last the Lord Chancellor appointed a Committee to consider the organisation of legal education in England with a view to (*a*) closer co-ordination between the work done by the Universities and professional bodies, and (*b*) further provision for advanced research in legal studies. Mr. Thomas H. Bischoff, a Member of the Council, is a member of the Committee.

Provincial Meeting, 1933.

On the invitation of the Berks, Bucks and Oxfordshire Incorporated Law Society, the Provincial Meeting, which will take place on the 26th and 27th September next, will be held at Oxford.

Solicitors Bill.

The statements contained in the last Annual Report regarding the proposed legislation to deal with defalcations and other matters require some modification in view of the fact that the Bills had become to a material extent an agreed measure, and that is was considered advantageous to prepare and introduce on behalf of the Council a new Bill incorporating the provisions in which there was general concurrence.

The new Bill includes the following main provisions :—

(1) The Council with the concurrence of the Master of the Rolls are to make rules under which it will be necessary to keep separate banking accounts of clients' money and proper and adequate books of account, and under which the Council will be empowered to take such action as may be necessary to ascertain whether or not the rules have been complied with.

(2) The Council may, if they think fit, make rules for regulating in respect of any other matter the professional practice, conduct and discipline of solicitors.

(3) Any complaint that the rules have been disregarded may be made to the Discipline Committee, who (subject of course to an appeal to the court) are given the additional power in respect of a breach of the rules of inflicting a penalty not exceeding £500.

(4) The Registrar (that is the Council) subject to an appeal to the Master of the Rolls may refuse to renew the practising certificate of any solicitor who has not paid any penalty which may have been imposed upon him.

The Bill is intended to apply to all practising Solicitors, except those who are employed as whole time public or statutory or local government officers. It will contain also special provisions to make clear what will be the position of banks in view of the specific notice given to them of the existence of the statutory provisions and the rules to be made under them.

The Bill was printed in the December 1932 issue of the Society's *Gazette*, and was introduced into the House of Commons by Mr. Roy Bird, M.P., and secured a second reading in the same month. It was referred to also in detail by the President at the Special General Meeting of the Society held in January last, and although the members did not dissent from it they expressed the wish that before rules were made they might have an opportunity of reading them. The Council recognised that members generally are entitled to see them, and accordingly notification was made that they

will be published in the Society's *Gazette* at the same time as they are sent to the Provincial Law Societies and the City of London Solicitors' Company.

The Bill passed the Committee stage in the House of Commons on the 30th March, and its third reading in that House on Friday, 12th May, 1933. It is now being considered by the House of Lords.

Solicitors Acts (Consolidation) Act, 1932.

The Bill to consolidate the statute law with respect to solicitors referred to in the last report duly received the Royal Assent. It repeals and re-enacts in a consolidated form some twenty Acts of Parliament, including the Solicitors Act of 1843.

A slight drafting error which had crept into s. 38 of the Act, which deals with the renewal of practising certificates, was rapidly rectified by including a small amending provision in the Administration of Justice Act, 1932, which in October last was under consideration by the Legislature.

All the rules and regulations which had been in force under the repealed Statutes relating to registration of and service under articles, admissions, the issue of practising certificates and to the Society's administrative work generally, have been re-made pursuant to the rule-making provisions of the Consolidation Act.

Solicitors' Remuneration.

In June, 1932, Sir Philip Martineau (then President of the Society) received a letter from the Lord Chancellor stating he had been trying to do something to meet the criticism that the cost of litigation is too high and had been urged to consider whether it was not time to reduce or abolish the addition of 33⅓ per cent. which had been made to the scales of costs allowed to solicitors.

The Lord Chancellor invited members of the Council to discuss the subject with him and a deputation was formed for this purpose, consisting of equal numbers of London and Provincial members of the Council. Meetings took place at which the Lord Chancellor and the Master of the Rolls were present. On behalf of the Council it was pointed out that the whole of the additional 33⅓ per cent. had been used to meet the extra overhead expenses, particularly clerks' salaries, which had resulted from post-war conditions, and that solicitors themselves were no better off than they had been originally. It was stated that while this observation applied generally, it was applicable specially to costs of litigation of which disbursements form the larger proportion.

The Council intimated to the Lord Chancellor that though they desired as far as they could justify themselves to the profession to fall in with his lordship's wishes, they could not consent to anything like a total abolition of the 33⅓ per cent. addition.

Ultimately it was decided that the addition should be reduced to 20 per cent. with regard to non-litigious and to 25 per cent. with regard to litigious matters.

Rules of Court were made subsequently under which in all courts the reduction to 25 per cent. took effect as from the 12th October, 1932, and the Rule Committees empowered to deal with non-contentious costs made rules giving effect to the reduction to 20 per cent. as from the 1st December, 1932.

Counsel's Fees—Two-thirds Rule.

In connection with the reduction in the cost of litigation it was agreed by the Bar Council that the rule as to the two-thirds proportion of a junior's fee to that of his senior need not apply to fees over 150 guineas.

After this announcement had been made it was claimed by a barrister's clerk that it did not apply to criminal business.

The Council took the matter into consideration and stated that they recognised no distinction in the matter between civil and criminal business.

County Courts (Amendment) Bill.

A new County Courts Bill has been prepared and the draft of it has been submitted by the Lord Chancellor to the Council for their observations. The Bill was accompanied by a series of interesting and valuable notes, which had been prepared by the draftsman of the Bill. In them he states that the main purpose of the Bill is to prepare the way for consolidation, but that opportunity has been taken in the Bill to make a number of minor reforms, which are not strictly necessary for the purpose of the Consolidation Bill.

Clause 29 of the Bill deals with debt collectors' notices. Other provisions which have received the particular attention of the County Courts Committee, a copy of whose report is included in the Appendix to the Report, are those which regulate and to some degree extend the jurisdiction of county courts in Admiralty matters. There are clauses also which provide that the remuneration of a solicitor for contentious business done by him in a county court shall be regulated by the same rules as govern his remuneration for contentious business done in other courts.

In expressing their approval of these clauses, the Council once again have urged that the jurisdiction of registrars should be raised so as to give them power to deal with actions for sums not exceeding £20.

A copy of the report has been forwarded to the Lord Chancellor.

County Court Practice.

Recently a county court judge has disallowed the costs of a successful plaintiff in a county court action on the ground that his solicitor had not signed the Court Roll. The Council are of opinion that no useful purpose is served by such signature and that the best evidence of this is the fact that the section of the Solicitors Act, 1932, and the County Court Rule which regulate the practice, have been disregarded on many occasions without injury to anyone.

The Council, in the circumstances, have requested the Lord Chancellor to include in the new County Court Bill a clause to repeal sub-s. (1) (ii) of s. 44 of the Solicitors Act, 1932.

Building Societies and Satisfaction of Mortgages.

The Incorporated Law Society of Plymouth complained of the practice of building societies in connection with the discharge of mortgages of delaying, so as to secure time for sealing the discharge, to hand over deeds forming the security in exchange for principal, interest and costs. Particular reference was made to the inconvenience caused to mortgagors desirous of transferring the building society mortgage or of selling the mortgaged premises.

The Council sympathised with the complaint and addressed a communication with regard to it to the National Association of Building Societies. The National Association, however, have replied that, having carefully considered the matter, their committee were unable to see that any unreasonable delay occurred, and in view of their experience in such cases they were not prepared to advise any alteration in the present practice.

House of Lords Procedure.

During the year the Council have received from the Lord Chancellor's Department an intimation to the effect that the Federation of Master Printers have agreed to a reduction of 4s. per page, that is to say, from 24s. to 20s. for the printing required in House of Lords Appeals.

The Council also have received new regulations in connection with House of Lords Appeals dispensing with the printing of the appendix and materially reducing the contents of the bound case.

Each of the foregoing arrangements will tend to reduce the heavy cost of an appeal to the House of Lords and accordingly are welcomed by the Council.

Business of the Courts Committee.

In December last the Lord Chancellor appointed a Departmental Committee to consider the state of business in the Supreme Court, and to report whether greater expedition in the dispatch of business, or greater economy in the administration of justice in the court is practicable and would be effected by any, and, if so, what, re-arrangements in the constitution of the Supreme Court and of the Divisions comprised in the High Court of Justice; and by any alteration in the days of sittings and the vacations of the Supreme Court, and by the elimination or restriction of the rights of appeal to, within, or from that court; and to consider the present arrangement for the dispatch and the administration of business at the Central Criminal Court and on Circuit, and to report whether greater economy and efficiency could be attained by any revision of the Orders in Council relating to the towns at which business is to be done on Circuit, or by any alteration in the administration of business or of the Grand Jury system, due regard being had to the maintenance of the present Circuit system on its main lines by the periodical visits of His Majesty's judges to those parts of the country where business suitable for consideration by them arises.

The Committee sit under the Chairmanship of the Master of the Rolls. Two members of the Council, namely, Mr. Hubert Arthur Dowson of Nottingham and Sir Philip Martineau of London, have been appointed members of it.

The Committee on the 24th February last issued an interim report in which the following, amongst other, recommendations were made :—

(*a*) That pleadings should be exchanged according to rule and that the summons for directions should not be taken out before the close of pleadings.

(*b*) That the time for delivering statements of claim and defence should be shortened to twenty-one and eight days respectively.

(*c*) That the question whether a jury is to be summoned in a civil case should be left to the discretion of a judge.

(*d*) That greater use should be made of the powers given by the present Rules of Court with regard to evidence. It is pointed out that the power to control the costs of proving what should have been admitted exists at present, and that if this power were exercised by the Taxing Masters a practice of securing an admission of the facts not really in issue but formally denied would soon grow up.

(*e*) That Order 54A under which an originating summons can be used to decide upon the construction of a contract should be extended so as to permit the inclusion of any dispute involving the construction of a statute.

(*f*) That all applications for a rule *nisi* in the case of prerogative writs, whether in the case of prohibition or *certiorari* or *mandamus*, should be made as now they are in the case of prohibition to the judge in chambers.

(*g*) That instead of insisting upon pleadings being printed the parties should be allowed to reproduce them by mechanical means.

(*h*) That a Committee should be appointed to re-draft and simplify the Rules of the Supreme Court.

(*i*) That Order 14 should be made available in substitution for writs of *subpœna ad respondendum* for the purpose of recovering sums due to the Revenue, and that the Crown should be entitled also to sue in the county court. Also that it should be possible in suitable cases to substitute an ordinary writ of summons for the procedure of English information.

(*j*) That cases arising with regard to the amount and rate of death duties should be rendered more easy of decision and be disposed of by originating summons. The subject ought not to be compelled to wait until proceedings are commenced by the Crown.

(*k*) That Grand Juries (subject to certain safeguards) should be abolished at Assizes and Quarter Sessions.

(*l*) That the Long Vacation should begin on the 1st August and terminate on the 30th September.

The Council are in sympathy with the recommendations, some of which—particularly those relating to Crown proceedings—they had themselves suggested.

Supreme Court Practice.

Payment out of Funds in Court.

Order 55, r. 2, of the Rules of the Supreme Court provides that all applications for distribution of funds in court must be by petition, except when the fund is £1,000 or less, when a summons may be issued. Members of the Society wrote suggesting that the Rules should be amended so as to permit the issue of a summons for higher amounts.

The Council took the matter into consideration and arrived at the opinion that there is no sufficient reason why all payment-out applications should not be made by summons. They have made representations to the Lord Chancellor accordingly.

Income Tax Act, 1918, Section 103.

In the last annual report it was stated that the Council had attended by deputation upon the Board of Inland Revenue regarding the question of the liability of solicitors to make returns under s. 103 of the Income Tax Act, 1918, in respect of income which has passed through their hands on behalf of clients. The Council had not contended that a solicitor was not bound to make a return under the section if in the circumstances of his case he found that the section was applicable. Their contention was that the Form 8-2 was not in accordance with the section and that therefore solicitors were not compellable to complete and return the form as it stood.

In response to representations made to them by the Council, the Board have issued a revised edition of the form by which instead of demanding a return of "all income belonging to any other person and chargeable under the Income Tax Acts" they have adopted almost the actual words of the section and have demanded a correct statement of "any money or value, or profits or gains of or belonging to any other person" of which the person making the return is in receipt and in respect of which income tax is chargeable and has not been deducted at the source.

Poor Persons Procedure.

The report for the year 1932 of the work done by the Committees appointed by The Law Society and the Provincial Law Societies under the Poor Persons Procedure Rules is included in the Appendix (*post*, p. 132), and shows that the work of the London Committee and of the eighty-nine Provincial Committees has progressed satisfactorily, and that the Committees are abreast of their work. The report shows also that the Committees are not limiting themselves strictly to High Court cases, to which the Rules themselves apply, but are giving advice, and if need be assistance in deserving cases, both in the county court and the police court.

It was stated in the last annual report that the President had issued a circular to London solicitors requesting them to come forward in greater numbers to conduct poor persons' cases. There was a certain response to that circular, but scarcely an adequate one. The Council venture to express the hope that London solicitors who do not already assist in the work will send in their names to the Secretary, with an offer to take a share in it. It cannot be too often pointed out that if every solicitor in London would undertake only one case per annum, the individual burden would be entirely negligible so far as London is concerned.

Since the report was issued, letters have been received from the Lord Chancellor, the Master of the Rolls and several of His Majesty's Judges, expressing appreciation of the work. The Council desire to take this opportunity once again of expressing to the Committees and their Secretaries and to the conducting solicitors their thanks for their loyal and valuable co-operation.

Rent and Mortgage Interest Restrictions (Amendment) Bill.

Clause 7 of this Bill, as originally it was introduced, empowered local authorities to set up Committees for the purpose of giving information and advice, for the assistance of landlords and tenants, as to their rights and duties under the Acts, and as to the procedure for enforcing such rights or securing the performance of such duties and also as to the extent and character of alternative accommodation.

The Council pointed out to the Ministry of Health that the appointment of statutory committees to give advice with regard to matters referred to in the section, would be attended with considerable risk, and would tend rather further to complicate the present law than to assist landlords and tenants.

Ultimately the Government deleted from the clause the provision as to giving advice.

Summary Jurisdiction (Appeals) Bill.

This Bill seeks to repeal the provision by which an appellant from a Court of Summary Jurisdiction is called upon to enter into a recognisance conditioned to pay the costs of the appeal. The Bill seeks to provide also that if it appears to the Court of General or Quarter Sessions to which an appeal from a conviction or order from a Court of Summary Jurisdiction lies that the means of an appellant or respondent are insufficient to enable him to obtain legal aid, and that it is desirable in the interests of justice that such appellant or respondent should have legal aid, the court may grant him a defence certificate.

In the course of the debate in the House of Commons it was stated that the average recognisance or deposit required for an appeal is £50, that out of 520,000 persons convicted in 1931 by courts of summary jurisdiction only 314 persons appealed, and that in 102 cases the conviction had been quashed, in eighty-one cases the sentence had been modified, and in 131 cases the appeal had been dismissed. The Under-Secretary stated that a Departmental Committee had been appointed in July, 1932, to consider the law and practice relating to appeals from decisions of courts of summary jurisdiction and to recommend such amendment, if any, as might be thought desirable, that their report was expected shortly, that the Government would lose no time in considering the report, and that the Bill could then be considered in the light of the Government's decision.

The Council consider that even if a moderate check is placed upon frivolous appeals, the Bill must be regarded as likely to result in a large increase in the number of appeals from magistrates, and that the number of applications for free legal aid will be equally numerous. It seems to the Council that there should be ready access by appellants to whatever appeal tribunal is provided, and that therefore solicitors should, with regard to every appeal under the Act, be permitted unrestricted right of audience before the appeal tribunal. The Council consider also that solicitors should be adequately remunerated for the work which would be involved.

Representations to the foregoing effect have been addressed to the Home Secretary.

The Bill has passed the House of Commons.

Administration of Justice Act, 1932.

This Act includes a section enabling official arbitrators to deal with costs of applications regarding restrictive covenants under s. 84 of the Law of Property Act, 1925. This section was included in the 1932 Act on the request of the Council of The Law Society, who had received numerous complaints that respondents to applications under s. 84 had on several

occasions been left to pay their own costs, even though the application had been unsuccessful or even entirely abandoned.

PROCEEDINGS UNDER THE SOLICITORS ACT, 1932.

The forty-fourth annual report of the Committee constituted under the Solicitors Acts, 1888 and 1919 (now consolidated in the Solicitors Act, 1932), will be found in the appendix to this report, which shows that on the application of the Society the names of eight solicitors, who had previously been convicted on indictment and sentenced to terms of imprisonment, were struck off the Roll and two solicitors were suspended by order of the Committee; that on the application of private individuals and of the Society the names of six solicitors were struck off the Roll and six other solicitors were suspended from practising and ordered to pay costs; that in one case the Committee found that as the conduct of the solicitor was deserving of censure he was ordered to pay the costs; that in one case the solicitor was found guilty of professional misconduct, but having regard to the special circumstances of the case they were of opinion that justice would be met by ordering him to pay the costs; that in one case the Committee found that although the allegations against the solicitor had not been substantiated the application was justified and the solicitor was ordered to pay the costs; and that in three cases (each of which was in regard to the same solicitor) the Committee found that the allegations had not been substantiated and in each case they ordered the complainant to pay the costs.

The report shows that there was one appeal to the King's Bench Division by a solicitor from an order made against him by the Committee and that the appeal was dismissed with costs.

As indicating the magnitude of the work undertaken by the Professional Purposes Committee it is convenient to mention here that that Committee dealt, during the period under review, with upwards of 1,500 applications affecting the practice and etiquette of the profession.

Societies.

Gray's Inn.

GRAND DAY.

Thursday, the 15th of June, being the Grand Day of Trinity Term at Gray's Inn, the Treasurer (Sir Walter Greaves-Lord, K.C., M.P.) and the Masters of the Bench entertained at dinner the following guests: The Right Hon. Stanley Baldwin, M.P., The Most Hon. The Marquess of Reading, G.C.B., G.C.V.O., G.C.S.I., G.C.I.E., The Master of the Rolls (The Right Hon. Lord Hanworth, K.B.E.), Major The Right Hon. George Tryon, M.P. (Minister of Pensions), The Right Hon. Lord Justice Lawrence, Sir Charles Oman, K.B.E., M.P., The Treasurer of the Hon. Society of Lincoln's Inn (The Right Hon. Lord Justice Romer), Sir George Sutton, Bart., the President of the Royal Academy (Sir William Llewellyn, G.C.V.O.), the Solicitor-General (Sir Boyd Merriman, K.C., M.P.) and His Honour Hugh Sturges, K.C. The Benchers present, in addition to the Treasurer, were: The Right Hon. Sir Dunbar Plunket Barton, Bart., K.C., Mr. Herbert F. Manisty, K.C., Mr. Edward Clayton, K.C., The Right Hon. Lord Atkin, Sir Montagu Sharpe, K.C., The Right Hon. Lord Justice Greer, His Honour Ivor Bowen, K.C., Sir Cecil Walsh, K.C., The Right Hon. Lord Thankerton, The Right Hon. Lord Greenwood, K.C., The Hon. Vice-Chancellor Sir Courthope Wilson, K.C., The Right Hon. Lord Morison, Mr. J. W. Ross-Brown, K.C., Mr. James Whitehead, K.C., Mr. A. Andrewes-Uthwatt, Mr. Malcolm Hilbery, K.C., Mr. Noel Middleton, Mr. N. L. C. Macaskie, K.C., Mr. Harold Derbyshire, M.C., K.C., Sir Albion Richardson, C.B.E., K.C., with the Preacher (The Rev. Canon F. B. Ottley, M.A.) and the Under-Treasurer (Mr. D. W. Douthwaite).

Inner Temple.

GRAND DAY.

Wednesday, 21st June, being the Grand Day of Trinity Term at Inner Temple, the Treasurer (Sir William Hansell, K.C.) and the Masters of the Bench, entertained at dinner the following guests:—

The Duke of Argyll, the Netherland Minister, The Earl of Derby, The Earl of Shaftesbury, The Lord Bishop of Lincoln, Lord Russell of Killowen, Mr. Justice Horridge, The President of the Royal Academy of Arts, Air-Marshal Sir Robert Brooke-Popham, Sir Reginald Antrobus, Major-General Sir William Benyon, Sir Basil Mayhew, Sir Chartres Biron, Sir John Beaumont (Chief Justice of Bombay), Sir Eric Maclagan, the Treasurer of the Middle Temple, Mr. Theobald Mathew, the Reader, and the Sub-Treasurer.

The Masters of the Bench present, in addition to the Treasurer, were:—

The Lord Archbishop of Canterbury (Hon.), Lord Darling, The Earl of Desart, Sir Sidney Rowlatt, Sir Lancelot Sanderson, Mr. Howard Wright, Lord Hanworth of Hanworth (Master of the Rolls), Sir Gerald Hohler, K.C., Mr. A. W. Bairstow, K.C., Mr. Alexander Grant, K.C., Mr. T. Hollis Walker, K.C., Mr. Justice Acton, Mr. Justice Bateson, Mr. Justice Humphreys, Lord Wright of Durley, Lord Macmillan (Hon.), Lord Justice Slesser, Judge Konstam, K.C., Mr. C. M. Pitman, K.C., Mr. P. E. Sandlands, Mr. A. T. Bucknill, K.C., Mr. J. E. Singleton, K.C., Mr. M. J. L. Beebee, Mr. S. R. C. Bosanquet, K.C., Mr. H. H. Joy, K.C., Master Sir George Bonner, Mr. R. A. Gordon, K.C., Mr. C. Doughty, K.C., Mr. C. N. Tindale Davis, Mr. D. Cotes-Preedy, K.C., and Mr. S. L. Porter, K.C.

The Hardwicke Society.

An ordinary meeting of the Society was held in the Middle Temple Common Room on Friday, 16th June. The President, Mr. Vyvyan Adams, M.P., took the chair at 8.25 p.m. In public business Mr. Geoffrey Raphael (ex-President) moved: "That marriage is a snare and a delusion." Mr. Melford Stevenson opposed. There spoke to the motion Mr. Tracey Watts, Mr. Yahuda, Mr. Wigan, Mr. Colin Pearson (ex-President), Mr. Menzies, Mrs. Ungoed-Thomas, Miss Moshkowitz, Mr. Llewellyn Thomas, Mr. Baden Fuller, Miss Ashworth, Mr. Stride (Hon. Secretary), Mr. Douglas, Prince Lieven, and the Hon. Proposer in reply. On a division the motion was lost by six votes.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held at 60, Carey-street, on the 14th June, Mr. E. R. Cook, C.B.E., in the chair. The other Directors present were: Sir A. Norman Hill, Bart., Sir E. F. Knapp-Fisher, Sir Reginald W. Poole, and Messrs. Ernest E. Bird, Arthur C. Borlase (Brighton), W. Arthur Coleman (Leamington), T. G. Cowan, Alan G. Gibson, Gerald Keith, E. B. Knight, Charles W. Lee, C. G. May, Henry W. Michelmore (Exeter), Robert C. Nesbitt, E. C. Ouvry and Arthur B. Urmston (Maidstone). £1,425 was distributed in grants of relief, 186 new members were admitted, and other general business was transacted.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the appointment of The Right Honourable Sir WILLIAM ELLIS HUME-WILLIAMS, Bt., K.B.E., K.C., to be a Commissioner of Assize to go the Midland Circuit (Warwick and Birmingham).

The Lord Chancellor has appointed Mr. CLAUDE WILLIAM MARSHALL to be the Registrar of Woodbridge and Felixstowe County Court as from the 16th June.

Mr. WILLIAM NORMAN TILLEY, K.C. (Canada), has been elected an Honorary Master of the Bench of Gray's Inn.

Mr. A. M. OLIVER, solicitor, Town Clerk of Newcastle-upon-Tyne, has been appointed Chairman of the Law Committee of the Association of Municipal Corporations. Mr. Oliver, who was admitted a solicitor in 1896, has been Vice-Chairman of the Law Committee for two years.

Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS, or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

Wills and Bequests.

Rodney Ashton Anderson-Ashton, solicitor, of Ludlow, Salop, left £55,156, with net personalty £54,578.

Mr. Thomas Ledbrooke Grimes, solicitor, of Throgmorton-avenue, and of Highgate, left £17,391, with net personalty £14,979.

Mr. Hugh Booth Lee, solicitor, of Whitchurch, Salop, left estate of the gross value of £5,996, with net personalty £5,406. He left to the Public Museum and Library at Whitchurch all the armour and swords, most of which were found buried in the garden of his old home, Oak Bank, Maslor, Flint, in 1879, and his firearms and pistols, including the special constable's staff which was used at the time of the Whitworth Fires, and the printed pamphlet account of such fires; and £50 each to Whitchurch Cottage Hospital and Whitchurch Working Men's Hall.

Mr. Philip Thornton, J.P., solicitor, of Bedford-row, W.C., and Rickmansworth, left £7,767, with net personalty £4,230.

Mr. Edwin Gulliford, solicitor, of Southampton, left £26,148, with net personalty £24,735.

Mr. Frederick Arthur Sarjeant, C.B.E., J.P., solicitor, of Reading, left estate of the gross value of £26,406, with net personalty £23,445. He left £200 to the Oxford Diocesan Deaf and Dumb Institution, and the residue of the property to his wife for life. On her death he left £500 to the Abbey School, Reading, as an endowment fund to enable scholars to proceed to Oxford or Cambridge; £1,000 between the Queen Victoria Institution for Nurses, Reading, and the Solicitors' Benevolent Institution, and after other provisions the ultimate residue between the Bible Society, the Church Missionary Society, the Church Army for Waifs and Strays, the Royal Berks Hospital, Blagrave branch, the Earley Working Men's Club, Dr. Barnardo's Homes, the National Lifeboat Institution, the Reading Blind Aid, the Royal Masonic Institution for Boys, the Royal Masonic Institution for Girls, and the Royal Masonic Benevolent Institution.

BOROUGH OF WALSALL.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, the 6th day of July, at 10 o'clock in the forenoon.

ENGLISH JUDGE IN SCOTTISH COURT.

Mr. Justice MacKinnon, says *The Times*, sat with Lord Blackburn and Sir Francis Taylor, K.C., in the Court of the Railway and Canal Commission in the Parliament House, Edinburgh, on Wednesday, 21st June, this being the first time that an English judge had sat on the bench as a constituent member of a Scottish Court. Mr. T. Graham Robertson, K.C., on behalf of the Scottish Bar, acknowledged the gracious reference by Mr. Justice MacKinnon to that Bar on the recent occasion of Lord Blackburn sitting with him in London as setting the precedent.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.		EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Non-Witness.	MR. JUSTICE MAUGHAM. Witness. Part II.
		Mr.	Mr.	Mr.	Mr.
June	26	Andrews	Blaker	Ritchie	*Andrews
,,	27	Jones	More	Andrews	More
,,	28	Ritchie	Hicks Beach	More	*Ritchie
,,	29	Blaker	Andrews	Ritchie	Andrews
,,	30	More	Jones	Andrews	*More
July	1	Hicks Beach	Ritchie	More	Ritchie

DATE.		GROUP I. MR. JUSTICE BENNETT. Witness. Part I.	GROUP II. MR. JUSTICE CLAUSON. Witness. Part II.	MR. JUSTICE LUXMOORE. Witness. Part I.	MR. JUSTICE FARWELL. Non-Witness.
		Mr.	Mr.	Mr.	Mr.
June	26	*More	Blaker	*Jones	Hicks Beach
,,	27	*Ritchie	*Jones	*Hicks Beach	Blaker
,,	28	*Andrews	Hicks Beach	*Blaker	Jones
,,	29	*More	*Blaker	Jones	Hicks Beach
,,	30	Ritchie	Jones	*Hicks Beach	Blaker
July	1	Andrews	Hicks Beach	Blaker	Jones

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 29th June, 1933.

	Div. Months.	Middle Price 21 June 1933.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	109¾	3 12 11	3 7 11
Consols 2½%	JAJO	73	3 8 6	—
War Loan 3½% 1952 or after	JD	99	3 10 8	—
Funding 4% Loan 1960-90	MN	110½	3 12 5	3 8 0
Victory 4% Loan Av. life 29 years	MS	109¾	3 12 11	3 9 3
Conversion 5% Loan 1944-64	MN	116¾	4 5 8	3 3 6
Conversion 4½% Loan 1940-44	JJ	109¼	4 2 4	3 0 3
Conversion 3½% Loan 1961 or after	AO	99¼	3 10 6	—
Conversion 3% Loan 1948-53	MS	98	3 1 3	3 2 8
Conversion 2½% Loan 1944-49	AO	93	2 13 9	3 1 3
Local Loans 3% Stock 1912 or after	JAJO	85	3 10 7	—
Bank Stock	AO	340½	3 10 6	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	76	3 12 4	—
India 4½% 1950-55	MN	105	4 5 9	4 1 9
India 3½% 1931 or after	JAJO	80	4 7 6	—
India 3% 1948 or after	JAJO	68	4 8 3	—
Sudan 4½% 1939-73	FA	110	4 1 10	2 10 4
Sudan 4% 1974 Red. in part after 1950	MN	108	3 14 1	3 7 6
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	100	3 0 0	3 0 0
COLONIAL SECURITIES				
*Australia (Commonw'th) 5% 1945-75	JJ	104	4 16 2	4 11 2
Canada 3½% 1930-50	JJ	98	3 11 5	3 13 2
*Cape of Good Hope 3½% 1929-49	JJ	99	3 10 8	3 11 8
Natal 3% 1929-49	JJ	94	3 3 10	3 10 0
New South Wales 3½% 1930-50	JJ	92	3 16 1	4 3 4
*New South Wales 5% 1945-65	JD	103	4 17 1	4 13 4
*New Zealand 4½% 1948-58	MS	104	4 6 6	4 2 8
*New Zealand 5% 1946	JJ	107	4 13 5	4 5 9
*Queensland 4% 1940-50	AO	99	4 0 10	4 1 8
*South Africa 5% 1945-75	JJ	110	4 10 11	3 18 9
*South Australia 5% 1945-75	JJ	104	4 16 2	4 11 2
Tasmania 3½% 1920-40	JJ	98	3 11 5	3 17 1
Victoria 3½% 1929-49	AO	93	3 15 3	4 2 0
*W. Australia 4% 1942-62	JJ	99	4 0 10	4 1 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	84	3 11 5	—
Birmingham 4½% 1948-68	AO	113	3 19 8	3 7 8
*Cardiff 5% 1945-65	MS	110	4 10 11	3 18 9
Croydon 3% 1940-60	AO	93	3 4 6	3 8 0
*Hastings 5% 1947-67	AO	114	4 7 9	3 14 0
Hull 3½% 1925-55	FA	99	3 10 8	3 11 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	98	3 11 5	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	72	3 9 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	84½	3 11 0	—
Manchester 3% 1941 or after	FA	85	3 10 7	—
Metropolitan Consd. 2½% 1920-49	MJSD	93	2 13 9	3 1 3
Metropolitan Water Board 3% "A" 1963-2003	AO	87	3 9 0	3 10 0
Do. do. 3% "B" 1934-2003	MS	88	3 8 2	3 9 1
Do. do. 3% "E" 1953-73	JJ	93xd	3 4 6	3 6 5
*Middlesex C.C. 3½% 1927-47	FA	101	3 9 4	—
Do. do. 4½% 1950-70	MN	113	3 19 8	3 9 5
Nottingham 3% Irredeemable	MN	85	3 10 7	—
*Stockton 5% 1946-66	JJ	114	4 7 9	3 12 6
ENGLISH RAILWAY PRIOR CHARGES				
Gt. Western Rly. 4% Debenture	JJ	102½	3 18 1	—
Gt. Western Rly. 5% Rent Charge	FA	115½	4 6 7	—
Gt. Western Rly. 5% Preference	MA	88½	5 13 0	—
‡L. & N.E. Rly. 4% Debenture	JJ	86	4 13 0	—
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	73½	5 8 10	—
London Electric 4% Debenture	JJ	101½xd	3 18 10	—
‡L. Mid. & Scot. Rly. 4% Debenture	JJ	92½xd	4 6 6	—
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	81½	4 18 2	—
Southern Rly. 4% Debenture	JJ	100½xd	3 19 7	—
Southern Rly. 5% Guaranteed	MA	109½	4 11 4	—
Southern Rly. 5% Preference	MA	92½	5 8 1	—

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡ These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.

MONEYLENDERS ACT, 1927

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MONEYLENDERS' Licences will expire on the 31st July, and Forms 1 and 3 will be required in connection with their renewal. The forms marked * have been settled for the Society by the authors of the "Law Relating to Moneylenders." Forms 4, 5, 6, 7 and 8 are supplied in duplicate for the price shown. By the use of carbon paper, a copy of the document can thus be made for delivery to the Borrower as required by the Act.

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3. Application for Excise Licence or Licences	0	2
4. *Memorandum of Agreement for Repayment with or without surety. (Duplicate form)	1	0
5. *Pawnbroker's Memorandum of Special Contract. (Duplicate form) ..	1	0
6. *Contract of Suretyship. (Duplicate form)	1	0
7. *Legal Charge of Property. (Duplicate form)	1	0
8. *Mortgage of Life Policy. (Duplicate form)	1	0
9. *Promissory Note by one person. (*Draft*)	0	6
10. *Promissory Note by more than one person jointly or severally. (*Draft*) ..	0	6
11. Application to the Board of Trade for the exemption from the Act of a body corporate.	0	2

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